CONSILIUL NAȚIONAL PENTRU COMBATEREA DISCRIMINĂRII

Report regarding the implementation of framework Directive (2000/78/EC) in Romania 2003 - 2010

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Contributions

The report regarding the implementation of the framework Directive in Romania summarizes the activity of the National Council for Combating Discrimination during 2003 – 2010, in terms of actions, programs and discrimination cases which are relevant under Directive 2000/78/EC.

The achievement of the report was possible through the setting up and collaboration of a working group made up of experts within the specialized departments of the National Council for Combating Discrimination.

Composition of the working group: Dezideriu Gergely, Steering Committee member (coordinator), Carmen Chiru, Angelica Paraschiv (Office of Assistants to the Steering Committee), Corina Comsa, Diana Pana, Andrei Sinescu (Division of Programs and International Relations), Vlad Ifrim (Legal Division), Nicoleta Udrescu (Economic and Human Resources Division) and Dora Margarit (Office of the President).

The table of legislative correspondence between the national law and the Directive, NCCD's statute (**Chapter I**), the graphical summary of complaints and cases of ascertaining discrimination (**Chapter II**), the summary of discrimination cases found by NCCD during 2003-2010 (**Chapter III**) and the summary of cases regarding the interpretation of concepts of Directive 2000/78/EC in NCCD's case-law (**Chapter IV**) were performed by **Dezideriu Gergely**.

The selection of decisions delivered by the Steering Committee during 2003 – 2010, according to discrimination criteria of Directive 2000/78/EC and correlated elements of statistics (annex) were performed by **Carmen Chiru** and **Angelica Paraschiv**. The situation of decisions attacked at contentious matters courts was carried out by Vlad Ifrim.

The presentation of actions, activities and programs undertaken by NCCD with regard to discrimination on the grounds of Directive 2000/78/EC (**Chapter V**) was carried out by **Corina Comsa**, **Diana Pana**, **Andrei Sinescu**.

The process of editing, correction and text layout of the report was conducted by **Dora Margarit**.

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CHAPTER I

MEASURES OF TRANSPOSING DIRECTIVE 2000/78/EC IN NATIONAL LEGISLATION

I. The context of adopting the Directive and national transposition law

1. Adoption, entry into force, transposition and reporting deadline for the implementation of the Directive

1.1.1. *Directive 2000/78/EC establishing a general framework for equal treatment in employment ad occupation was adopted on 27 November 2000. The directive was published in* **Official Journal (L 303) of 2 December 2000**.

1.1.2. According to art. 18 of Directive 2000/78/EC: **Member States shall adopt the laws**, regulations and administrative provisions **necessary to comply** with this Directive **by 2 December 2003** at the latest (...)In order to take account of particular conditions, Member States may, if necessary, have **an additional period of 3 years** from 2 December 2003, **that is to say a total of 6 years**, to implement the provisions of this Directive **on age and disability discrimination**. (...)

1.1.3. According to art. 19 par. 1 of Directive 2000/78/EC: 1. Member States shall communicate to the Commission, **by 2 December 2005 at the latest and every five years thereafter**, all the information necessary for the Commission to draw up a report to the European Parliament and the Council **on the application of this Directive".**

2. Adoption, entry into force, amendments and supplements to national law of transposing the Directive

1.2.1. **The Government of Romania** adopted **Ordinance no. 137/2000** on the prevention and sanctioning of all forms of discrimination on 31 August 2000. The Ordinance was published in the **Official Gazette of Romania, Part I, no. 781 of 2 September 2000** and was approved with amendments and supplements through **Law no. 48/2002**, published in the Official Gazette of Romania, Part I, no. 69 of 31 January 2002.

1.2.2. Following its adoption and approval through law, G.O. no. 137/2000 was also amended and supplemented through:

- **Government Ordinance no. 77/2003** amending and supplementing G.O. 137/2000, published in the Official Gazette of Romania, Part I, no. 619 of 30 August 2003, approved with amendments and supplements through **Law no. 27/2004**, published in the Official Gazette of Romania, Part I, no. 216 of 11 March 2004;
- **Law no. 324/2006** amending and supplementing G.O. no. 137/2000, published in the Official Gazette of Romania, Part I, no. 626 of 20 July 2006;
- **Emergency Ordinance no. 75 of 11 June 2008** on establishing certain measures to settle financial aspects in the system of justice, published in the Official Gazette no. 462 of 20 June 2008, approved through **Law no. 76 of 1 April 2009**, published in the Official Gazette no. 231 of 8 April 2009.

1.2.3. **Law no. 324/2006** amending and supplementing G.O. no. 137/2000 stipulates that „**it transposes the provisions** of Council Directive 2000/43/EC implementing the principle of equal treatment between persons, irrespective of racial or ethnic origin, published in the Official Journal of European Communities (OJEC) no. L180 of 19 July 2000 and **the provisions of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, published in the Official Journal of the European Communities (OJEC) no. L303 of 2 December 2000”.**

II. The discrimination concept in the framework Directive (ARTICLE 2) and national law

1. DIRECT DISCRIMINATION IN THE FRAMEWORK DIRECTIVE

1.1. According to art. 2 par. 1 and par. 2 lett. a of the framework Directive:

> „(1) (1) For the purposes of this Directive, **the “principle of equal treatment” shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1** (n.n religion or convictions, disability, age or sexual orientation).
> (2) For the purposes of paragraph 1:
> (a) **direct discrimination shall be taken to occur when one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1”**

1.1. DIRECT DISCRIMINATION IN NATIONAL LAW

1.1.1. According to art. 1 par. 2 and par. 3 of G.O. no. 137/2000 republished, **the principle of equality among citizens, of exclusion of privileges and discrimination are guaranteed in the exercise of rights and regard persons in comparable situations.**

1.1.2. The concept of discrimination is defined in art. 2 of G.O. no. 137/200 republished. **Art. 2 par. 1** of G.O. no. 137/2000 prohibits discrimination based on certain criteria included in a non-comprehensive list, which are among others religion, convictions, age, sexual orientation or disability.

> „(1) (...), **discrimination means any distinction, exclusion, restriction or preference** based on race, nationality, ethnic and social origin, language, religion, social category, **convictions**, gender, **sexual orientation**, **age**, **disability**, non-infectious chronic disease, HIV contamination, affiliation to a disadvantaged category, as well as on any other criterion **aiming** or resulting in the **restriction or hindering of the recognition, use or exercise, under equality conditions, of the human rights and fundamental freedoms or of the rights recognized by the law in the political, economic, social and cultural field, or in any other fields of public life.**

1.2. Prohibition of direct discrimination in the Labour Code

1.2.1. Law no. 53/2003 subsequently amended and supplemented regulates the equality principle in labour relationships and prohibits direct discrimination.

1.2.2. Art. 5 par. 2 of the Labour Code (Law no. 53/2003) prohibits direct discrimination and in par. 3 it defines direct discrimination:

> (2) Any direct (...) discrimination against an employee based on sex, **sexual orientation**, genetic characteristics, **age**, national affiliation, race, colour, ethnicity, **religion**, political option, social origin, **disability**, family situation or responsibility, trade union affiliation or activity **shall be prohibited**".
> (3) The acts and deeds of exclusion, distinction, restriction or preference, based on one or several of the criteria referred to in paragraph (2), which have the purpose or effect of denying, restraining or removing the recognition, enjoyment or exercise of the rights provided for in the labour legislation **shall constitute direct discrimination.**

> **Art. 59** The **dismissal of the employees** shall be prohibited: a) based on (...) **sexual orientation**, (...), **age**, (...) **religion**, (...) **disability** (...).
> **Art. 154 par. 3 When setting and providing the wage**, **any discrimination** based on (...) **sexual orientation**, (...) **age**, (...) **religion**, (...) **disability**, (...) **shall be prohibited**.

2. INDIRECT DISCRIMINATION IN THE FRAMEWORK DIRECTIVE

2.1. According to art. 2 par. 2 lett. b of the framework Directive:

> (b) indirect discrimination shall be taken to occur where **an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless**: (i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or (ii) as regards persons with a particular disability, the employer or any person or organisation to whom this Directive applies, is obliged, under national legislation, to take appropriate measures in line with the principles contained in Article 5 in order to eliminate disadvantages entailed by such provision, criterion or practice

2.1. INDIRECT DISCRIMINATION IN NATIONAL LAW

2.1.1. The concept of indirect discrimination was introduced in anti-discrimination legislation through Government Ordinance no. 77 of 28 August 2003, amending and supplementing G.O. no. 137/2000, published in the Official Gazette no. 619 of 30 August 2003, being regulated in art. 2 par. 3.

2.2.2. According to art. 2 par. 3 of G.O. no. 137/2000, republished:

> According to this ordinance, **the apparently neutral provisions, criteria or practices that put at disadvantage certain persons in relation to others, based on the criteria referred to in par. (1) shall be deemed to be discriminatory, except when such provisions, criteria or practices are objectively justified by a legitimate aim and the means of attaining it are appropriate and necessary.**

2.2. Prohibition of indirect discrimination in the Labour Code

2.2.1. Law no. 53/2003 subsequently amended and supplemented regulates the equality principle in labour relationships and prohibits indirect discrimination.

2.2.2. Art. 5 par. 2 of the Labour Code (Law no. 53/2003) prohibits indirect discrimination and in par. 4 it defines indirect discrimination:

> (2) Any (...) **indirect discrimination** against an employee based on sex, **sexual orientation**, genetic characteristics, **age**, national affiliation, race, colour, ethnicity, **religion**, political option, social origin, **disability**, family situation or responsibility, trade union affiliation or activity **shall be prohibited**.
>
> ...
>
> (4) The acts and deeds **apparently based on other criteria than** those referred to in paragraph (2), but which effect to a direct discrimination, **shall constitute indirect discrimination**.

3. HARASSMENT IN THE FRAMEWORK DIRECTIVE

3.1. According to art. 2 par. 3 of the framework Directive

> (3) Harassment shall be deemed to be a form of discrimination within the meaning of paragraph (1) , **when unwanted conduct related to any of the grounds** referred to in Article 1 takes place **with the purpose or effect of violating the dignity** of a person and of **creating an intimidating, hostile, degrading, humiliating or offensive environment**. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.

3.1. HARASSMENT IN NATIONAL LAW

3.1.1. The concept of harassment was expressly introduced in national legislation through Law no. 27 of 5 March 2004 approving G.O. no. 77/2003 amending and supplementing G.O. no. 137/2000, published in the Official Gazette no. 216 of 11 March 2004.

3.1.2. According to art. 2 par. 5 of G.O. no. 137/2000 republished:

> (5) **Any behaviour based on a criterion** such as race, nationality, ethnicity, language, **religion**, social category, **convictions**, gender, **sexual orientation**, affiliation to a disadvantaged category, **age**, disability, the refugee or asylum seekers status or on any other criterion **that creates an intimidating, hostile, degrading or offensive environment constitutes harassment** and shall be contraventionally punished.

4. THE INSTRUCTION TO DISCRIMINATE IN THE FRAMEWORK DIRECTIVE

4.1. According to art. 2 par. 4 of the framework Directive:

> (4). **An instruction to discriminate against persons on any of the grounds referred to in Article 1 shall be deemed to be discrimination** within the meaning of paragraph 1.

4.1. THE INSTRUCTION TO DISCRIMINATE IN NATIONAL LAW

4.1.1. G.O. no. 137/2000 in its initial form, published in the Official Gazette no. 781 of 2 September 2000 stipulated in art. 2 par. 3: “The instructions, or as the case may be regulations of an individual or legal person which generate the effects set forth in par. (2) draw the contraventional liability of that individual or legal person, unless they fall under

criminal law". Art. 2 par. 3 of G.O. no. 137/2000 was repealed through Law no. 48 of 16 January 2002, approving G.O. no. 137/2000 on the prevention and sanctioning of all forms of discrimination, published in the Official Gazette no. 69 of 31 January 2002.

4.1.2. The concept of order/instruction to discriminate was introduced through Law no. 27 of 5 March 2004 approving G.O. no. 77/2003 amending and supplementing G.O. no. 137/2000, published in the Official Gazette no. 216 of 11 March 2004.

According to art. 2 par. 2 of G.O. no. 137/2000, republished:

> (2) For the purpose of this ordinance, **the order to discriminate against persons based on any of the grounds stipulated in par. (1) shall be regarded as discrimination.**

III. The scope of the framework Directive (ARTICLE 3) and national transposition law

1. SCOPE OF THE FRAMEWORK DIRECTIVE

3.1.1. According to art. 3, Directive 2000/78/EC „**shall apply to all persons,** as regards both the public and private sector, including public bodies, **in relation to:**

> **(a) conditions for access to employment**, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
> **(b) access to all types and to all levels** of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
> **(c) employment and working conditions**, including dismissals and pay;
> **(d) membership of, and involvement in, an organisation** of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

2. THE SCOPE OF THE NATIONAL TRANSPOSITION LAW (GENERAL PART)

3.2.1. According to art. 3 of Chapter I (Principles and definitions) of G.O. no. 137/2000 republished, „The **provisions** of this ordinance **shall apply to all persons**, individuals or public or private legal persons, as well as to all public bodies having prerogatives regarding:

> **a) employment conditions,** recruitment, selection and promotion **criteria and conditions**, access to all forms and levels of vocational orientation, training and advanced vocational training;
> **b) social security** and protection;
> **c) public services** or other services, **access to goods and facilities**;
> **d) the educational system;**
> **e) securing the freedom** of movement;
> **f) securing public order**;
> **g) other fields of social life**".

3. THE SCOPE OF THE NATIONAL TRANSPOSITION LAW (SPECIAL PART)

3.3.1. Chapter II (Special provisions) of Ordinance no. 137/2000 republished is structured in 5 sections which refer to Equality in the economic activity and employment, access to goods and services, access to education, freedom of movement and the right to personal dignity.

3.3.2. Section I, „**Equality in the economic activity, in employment and profession**” regulates aspects regarding:

a. the **participation** of a person to an economic activity or his/her free choice or exercise of a profession;
b. the **conclusion, suspension, modification or termination** of the labour relations;
c. settlement and modification of the work **competences**, place of work or wage;
d. granting of other social rights than the wage;
e. training, advanced training, reconversion and promotion;
f. enforcement of disciplinary **measures**;
g. the right to join a trade union and of access to its facilities;
h. any other labour **provision conditions**, under legislation in force;
i. refusal of an individual or legal person to get employed;
j. making the occupation of a position through advertisement or contest, launched by the employer or its representative **conditional;**
k. social entitlements granted.

3.3.3. Section II, **Access to legal and administrative public services, to health and other services, goods and facilities”** regulates aspects regarding:

a. **refusal to provide public** administrative and legal **services**;
b. denying the access of a person or of a group of persons to **public health services** – choosing the family doctor, medical assistance, health insurance, emergency or other health services;
c. refusal to sell or rent **a plot of land or residence** with dwelling purposes;
d. refusal to grant a bank credit or to conclude any other type of contract;
e. denying the access of a person or of a group of persons to services offered by **theatres, cinemas, libraries, museums and exhibitions**;
f. denying the access of a person or a group of persons to the services offered by **shops, hotels, restaurants, pubs, discotheques**, irrespective if they are under private or public ownership;
g. denying the access of a person or a group of persons to services offered by **public transportation companies** – by plane, ship, train, metro, bus, trolley, tram, taxi or by other means;
h. refusal to grant to a person or a group of persons certain **rights or facilities.**

3.3.4. Section III, **“Access to education”** regulates aspects regarding:

a. denying the access of a person or a group of persons to the **state or private educational system**;
b. any restrictions in the process of establishment and certification of educational institutions under legislation in force.

3.3.5. Section IV, „**Freedom of movement, the right to freely choose a residence and access to public places**” regulates aspects regarding:

a. behaviors aiming to persuade a person to leave his/her residence, to displace or burden living conditions of a person or a group of persons belonging to a certain race, nationality, ethnic group or religion or a community in view of urging them to yield their traditional residence, without their agreement.
b. behaviours aiming to displace or expel a person or a group of persons from a neighborhood or residence because of their affiliation with a certain religion, or due to their convictions, age, gender or sexual orientation.
c. prohibiting the access of a person or a group of persons to public places.

3.3.6. Section V, „**Right to personal dignity**" regulates aspects regarding:

a. behaviours exhibited in public, having a nationalist-chauvinist nature, of incitement to general or national hatred or that behaviour which pursues or aims to offend dignity or to generate an intimidating, hostile, degrading, humiliating or offensive environment directed against a person, a group of persons or a community.

IV. Specific occupational requirements in the framework Directive (ARTICLE 4) and national transposition law

1. SPECIFIC OCCUPATIONAL REQUIREMENTS IN THE FRAMEWORK DIRECTIVE

4.1.1. Article 4 of the framework Directive regulates the concept of „Occupational requirements". According to art. 4 of the framework Directive:

1. Notwithstanding Article 2(1) and (2), **Member States may provide that a difference of treatment which is based on a characteristic** related to any of the grounds referred to in Article 1 **shall not constitute discrimination** where, **by reason of the nature of the particular occupational activities concerned or of the context in which** they **are carried out**, such a characteristic constitutes a **genuine and determining occupational requirement,** provided that the objective is legitimate and the requirement is proportionate.
2. Member States **may maintain in their national legislation in** force at the date of adoption of this Directive or provide for future legislation incorporating national practices existing at the date of adoption of this Directive **pursuant to which**, **in the case of occupational activities within churches and other public or private organisations** the ethos of which is based on religion or belief, **a difference** of treatment **based on a person's religion or belief shall not constitute discrimination** where, by reason of the nature of these activities or of the context in which they are carried out, a person's **religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos**. This difference of treatment shall be implemented taking account of Member States' constitutional provisions and principles, as well as the general principles of Community law, and should not justify discrimination on another ground.
Provided that its provisions are otherwise complied with, this Directive shall thus not prejudice the right of churches and other public or private organisations, the ethos of which is based on religion or belief, acting in conformity with national constitutions and laws, to require individuals working for them to act in good faith and with loyalty to the organisation's ethos.

2. SPECIFIC OCCUPATIONAL REQUIREMENTS IN NATIONAL LAW

4.2.1. Section I of Chapter II of G.O. no. 137/2000 republished regulates the field of equality in the economic activity in the field of employment and profession. The content of articles 5-8 of G.O. 137/2000 regulates contraventions regarding making the participation to an economic activity or the choice or exercise of a profession conditional; discrimination regarding labour relations, salary entitlements and other rights, work competences, vocational training, disciplinary measures, joining a trade union; refusal to employ and employment announcements; social entitlements (for details see the Annex of Ordinance no. 137/2000, republished).

4.2.2. In this context, art. 9 of G.O. no. 137/2000 republished stipulates: 4.2.2. În acest context, Art. 9 din O.G. nr. 137/2000 republicată stipulează că:

> The provisions of art. 5-8 cannot be construed to restrict the right of an employer to refuse employing a person that does not fit the **relevant occupational requirements, as long as the refusal is not a discrimination deed in the meaning of this ordinance and such measures are objectively justified by a legitimate aim and the methods of attaining it are appropriate and necessary**.

3. NATIONAL LAW REGARDING RELIGIOUS FREEDOM

4.3.1. The Romanian legislator adopted Law no. 489 of 28 December 2006 regarding religious freedom and the general regime of cults, published in the Official Gazette no. 11 of 8 January 2007. Art. 23 par. 1 of Law no. 489/2006 regulates the employment of personnel of religious cults, as recognized according to the law.

4.3.2. According to art. 8 par. 1 and par. 3 of Law no. 489/2006 „The recognized cults are legal persons of public interest. They are organized and operate pursuant to constitutional provisions and this law, autonomously, according to their own statutes and canonical codes. The cults operate by observing legal provisions and according to their own statutes or canonical codes, which are relevant for their own believers”.

4.3.3. According to art. 23 par. 1 of Law no. 489/2006:

> The **cults** elect, appoint, **employ** or dismiss their **personnel** according to their **own statutes, canonical codes or regulations**.

4.3.4. Also, according to art. 32 of law no. 489/2006:

> (1) In the state and private education system, religion is taught through the law of recognized cults. (2) **The educational personnel who teach religion** in state schools shall be appointed through the **agreement of the cult** they represent, under the law. (3) In case a teacher commits a serious offence against the policy or ethics of the cult, the cult may withdraw its approval for teaching religion, which results in the termination of the individual labour agreement. (4) Upon request, when the management of the school cannot provide religion teachers belonging to the cult of the pupils, they can prove that they study their own religion through a certificate issued by the cult they belong to.

V. Reasonable accommodation for disabled persons (ARTICLE 5) and national law

1. REASONABLE ACCOMMODATION IN THE FRAMEWORK DIRECTIVE

5.1.1. Art. 5 of the Directive regulates the concept of reasonable accommodation and stipulates:

> In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, **reasonable accommodation** shall be provided. This means that **employers shall take appropriate measures, where needed** in a particular case, to enable a person with a disability to have access to, **participate in**, **or advance in employment**, or **to undergo training**, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned.

2. REASONABLE ACCOMMODATION IN NATIONAL LAW

5.2.1. G.O. no. 137/2000 republished does not include a clear provision regarding reasonable accommodation.

3. LAW REGARDING THE RIGHTS OF DISABLED PERSONS

5.2.2. The concept of reasonable accommodation at work is included expresis verbis in art. 5 point 4 of Law no. 448 of 6 December 2006 on the protection and promotion of the rights of disabled person (law republished with subsequent amendments and supplements).

> Through **reasonable accommodation at work** is understood „all **modifications made by the employer** to **facilitate the exercise of the labour right** of the disabled person; **it involves changing the work program, purchasing equipment, devices, assistive technologies and other such measures**".

5.2.3. Also, according to art. 6 lett. c and art. 83 par. 1 lett. b of Law no. 448/2006:

> Disabled persons seeking employment or employed shall **benefit from the right to reasonable accommodation at work**.

VI. Positive action in the framework Directive (ARTICLE 7) and national transposition law

1. POSITIVE ACTION IN THE FRAMEWORK DIRECTIVE

6.1.1. Art. 7 of the framework Directive regulates the concept of positive action and specific measures and stipulates:

With a view to ensuring full equality in practice, **the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages** linked to any of the grounds referred to in Article 1.
With regard to disabled persons, **the principle of equal treatment shall be without prejudice to the right of Member States to maintain or adopt provisions on the protection of health and safety at work or to measures** aimed at creating or maintaining **provisions or facilities** for safeguarding or promoting their integration into the **working environment**.

2. POSITIVE ACTION IN NATIONAL LAW

6.2.1. According to art. 2 par. 9 of G.O. no. 137/2000 republished:

Măsurile luate de autoritățile publice sau de persoanele juridice de drept privat în favoarea unei persoane, unui grup de persoane sau a unei comunități, **vizând asigurarea dezvoltării lor firești și realizarea efectivă a egalității de șanse a acestora în raport cu celelalte persoane**, grupuri de persoane sau comunități, **precum și măsurile pozitive ce vizează protecția grupurilor defavorizate nu constituie discriminare** în sensul prezentei ordonanțe.

6.2.2. G.O. no. 137/2000 republished defines the term of disadvantaged category in art. 4 and stipulates:

For the purpose of this ordinance, **disadvantaged category** is that **category of persons either in a position of inequality** in relation to most citizens, because of their identity differences from the majority, **or faced to a behaviour of rejection and separation**.

3. THE LAW REGARDING THE RIGHTS OF DISABLED PERSONS

6.3.1. The Romanian legislator regulated distinctly the rights and obligations of disabled persons with a view to their integration and social inclusion. Law no. 448 of 6 December 2006 concerns the protection and promotion of rights of disabled persons (law republished with subsequent amendments and supplements).

6.3.2. According to art. 4 lett. a-c of Law no. 448/2006, republished with subsequent amendments and supplements: :

„**The protection and promotion of the rights of disabled persons** are based on the following principles: (...) b) **preventing and combating discrimination**; c) **equality of opportunities**; d) **equality of treatment with in employment and occupation**; (...) p) integration and social inclusion of disabled persons, with equal rights and obligations as all others members of the society”.

6.3.3. Chapter V of Law no. 448/2006 regulates the rights of disabled persons as regards guidance, vocational training, occupation and employment

Art. 72 par. 1: „Any disabled person who wants to integrate or reintegrate into work has **free access to professional assessment and guidance**, irrespective of age, type and level of disability.”

Art. 75 par. 1: „Disabled persons are entitled to have established all **conditions of choice and exercise of their profession**, trade or occupation, in order to acquire and maintain employment and advance in their profession".
Art. 78 par. 1: „Disabled persons **may be employed according to their professional training and capacity**, as endorsed through the certificate of disability level, issued by assessment committees (...)"
Art. 80: „Disabled persons employed at home **will have ensured by their employer the transportation to and from their residence** of raw materials and other materials needed in their activity and of end products achieved".
Art. 83 par. 1: „Disabled persons seeking employment or employed benefit from the following rights: a) professional **training courses**; b) **reasonable accommodation** at work; c) **counseling** in the period prior to employment and during employment and in the probation period from a counselor specialized in mediation at work; d) a paid **probation period** on employment, of at least 45 working days; e) a **paid notice** period, of minimum 30 working days provided on termination of the individual labour agreement for non-attributable reasons; f) **the possibility of working less than 8 hours per day**, under the law, in case it is so recommended by the assessment committee".

6.3.4. Also, according to law no. 448/2006, republished with subsequent amendments and supplements, the employers of disabled persons benefit from certain rights. Thus, according to art. 84 of Law no. 448/2006:

The employers of disabled persons benefit from the following rights:
a) **deduction**, in calculating taxable income, of sums corresponding to the **accommodation** of protected **workplace**s and to acquisition of machinery and equipments used in production by the disabled person;
b) **deduction**, in calculating taxable income, of **transportation expenses** of disabled persons from their residence to work and expenses with the transportation of raw materials and end products to and from the residence of the disabled person employed to work at home;
c) **settlement** from the unemployment budget of **particular expenses of training**, professional guidance and employment of disabled persons.
d) **a state grant**, under the requirements of Law no. 76/2002 regarding the system of unemployment insurance and encouragement of occupation, subsequently amended and supplemented.

VII. Minimal requirements in the framework Directive (ARTICLE 8) and national transposition law

1. MINIMAL REQUIREMENTS IN THE FRAMEWORK DIRECTIVE

7.1.1. According to art. 8 of the Framework directive:

Member States **may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment** than those laid down in this Directive. The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive.

2. „AGGRAVANTES CIRCUMSTANCES” IN THE NATIONAL LAW

7.2.1. The national law introduces inherently the concept of multiple discrimination and regulates discrimination on two or more grounds as an aggravating circumstance in establishing contraventional liability.

According to art. 2 par. 6 of G.O. no. 137/2000 republished (introduced by G.O. no. 77/2003):

> **When establishing the contraventional liability**, any distinction, exclusion or preference **based on two or more criteria** stipulated in par (1) **is an aggravating circumstance**, if one or more of their constituents are not subject to criminal law.

VIII. Means of appeal and defence of rights in the framework Directive (ARTICLE 9) and national transposition law

1. „JUDICIAL AND ADMINISTRATIVE PROCEDURES” IN THE DIRECTIVE

8.1.1. According to art. 9 par. 1 of the framework Directive:

> Member States **shall ensure that judicial and/or administrative procedures**, including where they deem it appropriate **conciliation procedures**, for the enforcement of obligations under this Directive **are available to all persons** who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.

2. NATIONAL LAW AND JUDICIAL AND ADMINISTRATIVE PROCEDURES

8.2.1. The **procedure of settling** discrimination cases is regulated by **art. 20 of G.O. no. 137/2000 republished**. The person who consider himself/herself to be discriminated may apply to the National Council for Combating Discrimination with a petition for ascertaining and sanctioning discrimination or mediation.

Also, the person who deems himself/herself to be discriminated may apply to justice with a request for damages, under the requirements of **art. 27 of G.O. no. 137/2000, republished**.

8.2.2. The National Council for Combating Discrimination adopted the **Internal procedure of settling petitions and notifications, published in the Official Gazette no. 348 of 6 May 2008**. The requests applied in **justice** pertaining to damages caused through discrimination deeds shall be settled **according to ordinary law**.

3. THE CAPACITY TO PURSUE THE PROCEEDINGS IN THE FRAMEWORK DIRECTIVE

8.3.1. According to art. 9 par. 2 of the framework Directive:

> Member States shall ensure that **associations, organisations or other legal entities** which have, in accordance with the criteria laid down by their national law, **a legitimate interest** in ensuring that the provisions of this Directive are complied with, may engage, **either on behalf or in support of the complainant**, with his or her approval, in **any judicial and/or administrative procedure** provided for the enforcement of obligations under this Directive.

4. THE CAPACITY TO PURSUE THE PROCEEDINGS IN NATIONAL LAW

8.4.1. According to art. 28 par. 1 and par. 2 of G.O. no. 137/2000, republished, as amended through Law no. 27 of 5 March 2004:

> (1) **The non-governmental organizations aimed at protecting human rights or having a legitimate interest** in combating discrimination have **the capacity to pursue the proceedings** in case the discrimination relates to their field of activity and causes offense to a community or a group of persons.
> (2) The organizations stipulated in par. (1) have the capacity to pursue the proceedings also in case the discrimination causes offense to an individual, upon the latter's request.

5. STATUTES OF LIMITATION IN THE FRAMEWORK DIRECTIVE

8.5.1. According to art. 9 par. 3 of the Framework directive:

> Paragraphs 1 and 2 are without prejudice to national rules relating to **time limits for bringing actions** as regards the principle of equality of treatment.

6. STATUTES OF LIMITATION IN NATIONAL LAW

8.6.1. The statutes of limitation regarding actions brought before the National Council for Combating Discrimination or before courts are stipulated in art. 20 par. 1 and art. 27 par. 2 of G.O. no. 137/2000, republished.

According to art. 20 par. 1 and art. 27 par. 2 of G.O. no. 137/2000, republished:

> Art. 20 par. 1: „A person deeming himself discriminated **can notify the Council within one year** from the date when the deed was perpetrated or from the date when he could ascertain it".
> Art. 27 par. 1: The person deeming himself discriminated **may draft before the court a request of damages** and of re-instating the situation before discrimination or annulment of the situation created through discrimination, according to ordinary law. The request is exempt of judicial stamp tax and is not conditioned on notifying the Council.
> (2) **The term for submitting the request is 3 years** and it starts on the date of deed perpetration or on the date when the concerned person could ascertain it.

IX. Burden of proof in the framework Directive (ARTICLE 10) and national transposition law

1. BURDEN OF PROOF IN THE FRAMEWORK DIRECTIVE

9.1.1. According to art. 8 par. 1 of the framework Directive:

> Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, **when persons who consider themselves wronged** because the principle of equal treatment has not been applied to them **establish**, before a court or other competent authority, **facts from which it may be presumed that there has been** direct or indirect **discrimination**, **it shall be for the respondent to prove** that there has been **no breach** of the principle of equal treatment.

2. BURDEN OF PROOF IN NATIONAL LAW

9.2.1. Art. 20 par. 6 of G.O. no. 137/2000, as amended through Law no. 324/2006 (published in the Official Gazette no. 626 of 20 July 2006) regulates the burden of proof in discrimination cases. The same rule applies to actions brought before courts, according to art. 27 par. 4 of G.O. no. 137/2000, republished.

> „**The concerned person is obliged to prove the existence of the deeds allowing to presume** the existence of a direct or indirect discrimination and **the person against whom the notification was filed is responsible for proving that the deeds are not discrimination.** Any kind of evidence can be brought before the Steering Committee, including audio and video recordings or statistical data”.

9.2.3. On 8 December 2010, the Romanian Senate adopted a draft bill (L462/2010) which amended art. 10 par. 6 of G.O. no. 137/2000, republished. The amended text has the following content:

> The concerned person is obliged to prove the existence of deeds allowing to presume the existence of direct or indirect discrimination and **the person against which the notification was filed *may bring*, *in his/her defence*, *any kind of evidence in order to prove* that the deeds are not discrimination**. Any kind of evidence can be brought before the Steering Committee, including audio and video recordings or statistical data.”

9.2.4. On 10.12.2010, the draft bill was transmitted to the Chamber of Deputies (decision-making chamber) for debate and approval.

X. Victimisation in the framework Directive (ARTICLE 11) and national transposition law

1. VICTIMISATION IN THE FRAMEWORK DIRECTIVE

10.1.1. According to art. 11 of the framework Directive:

> Member States shall introduce into their national legal systems such measures as are necessary to protect employees against dismissal or other **adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment**.

2. VICTIMISATION IN THE NATIONAL LAW

10.2.1. The concept of victimisation was introduced in national legislation through G.O. no. 77/2003 and amended through Law no. 27/2004. According to art. 2 par. 7 of G.O. no. 137/2000 republished:

> According to this ordinance, **any adverse treatment as a reaction to a complaint or to any legal proceedings in relation to the infringement of the equal treatment or of the non-discrimination principle** constitutes victimisation and shall be contraventionally punished.

XI. Bodies promoting equality of treatment under European Directives

1. BODIES PROMOTING EQUALITY – DIRECTIVE 2000/43/EC

11.1.1. According to art. 13 of Directive 2000/43/EC:

(1) Member States **shall designate a body** or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights..
(2) without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 7(2):
- **providing independent assistance** to victims of discrimination in pursuing their complaints about discrimination;
- **conducting independent surveys** concerning discrimination;
- **publishing independent reports and making recommendations** on any issue relating to such discrimination.

XI.bis National Council for Combating Discrimination and fulfilling the institutional independence standards under Directive 2000/43/EC

1. Establishment of the National Council for Combating Discrimination

11.1.1. Government Ordinance no. 137 of 31 August 2000 on the prevention and sanctioning of all forms of discrimination, published in the Official Gazette no. 781 of 2 September 2000, referring to the National Council for Combating Discrimination stipulated in art. 23 par. 1 that it is a **specialized central Government body, subordinated to the Government.** Par. 2 of the same article stipulated that the **organisational structure and other powers** of the National Council for Combating Discrimination shall be **regulated through Government Decision**. The nature of NCCD's central Government body, subordinated to the Government is consequently laid down in art. 1 par. (1) of Government Decision no. 1194/2001 which adds that it has legal personality. Therefore, the National Council for Combating Discrimination in the initially adopted formula was a central Government body, directly subordinated to the Government and organized separately from ministries.

11.1.2. Government Decision no. 1194 of 27 November 2001 on the organization and operation of the National Council for Combating Discrimination, published in the Official Gazette no. 792 of 12 December 2001 stipulated in art. 4 par. 1 that: „(1) The President is appointed and discharged through Decision of the Prime-Minister, from the members of the Steering Committee". According to art. 5 (1) „The members of the Steering Committee are appointed and discharged through Decision of the Prime-Minister, and (2) „In order to appoint the members of the Steering Committee, the Ministry of Public Information, Ministry of Labour, Social Solidarity and Family, Ministry of Justice, Ministry of Health, Ministry of Administration and Interior and Ministry of Education, Research and Youth submit three proposals each…" and (3) The Prime Minister will appoint one member each from the three proposed by the public authorities stipulated in par. (2)".

2. European Union Council Decisions regarding Romania's accession process and institutions of combating discrimination

11.2.1. The 1999 Accession Partnership with Romania, revised in 2000, stipulates in the chapter Political Criterion/Human Rights, Section Objectives, point 4.3. „Medium Term” as a priority the recommendation of „**implementing measures to combat discrimination, also within the public administration**”. [1]

11.2.2. Through **Decision of the Council of the European Union 2002/92/EC**, point 6, the EU Council indicates that „in order to prepare for accession, Romania must continue to revise its national program for the adoption of the acquis”. Thus, the Council, in accordance with art. 2 of the (EC) norms no. 622/98 established the principles, priorities, intermediate objectives and requirements of the Accession Partnership with Romania. Chapter 4 Priorities and intermediate objectives, Section Political Criterion/Human rights and protection of minorities includes as a **priority to be complied with by Romania**, i.e. „t**he establishment and ensuring of the appropriate operation of institutions to prevent and combat all forms of discrimination**”[2]. Also, the chapter Economic Criterion, section Social and employment policies includes **Romania's obligation to „adopt the secondary legislation for combating discrimination and develop an implementation plan**”.

11.2.3. Romania's priorities for accession were restated and revised through **Decision of the Council of the European Union 2003/397/EC** [3] regarding the principles, priorities, intermediate objectives and requirements of the Accession Partnership with Romania. The Council of the European Union expressly settled in chapter 4 Priorities, Section Political Criterion „**to continue to align the acquis in the field of non-discrimination and properly implement it in order to ensure the operational functioning of the National Council for Combating Discrimination**.” In the chapter Economic Criterion, section Social and employment Policies, the EU Council re-affirms **Romania's obligation to continue to align the acquis in the field and non-discrimination and ensure its implementation**”. The implementation of the Accession Partnership and of the obligations undertaken through the Decisions of the European Council were monitored pursuant to art. 2 of Decision 2002/92/EC and 2003/397/EC by the institutions of the European Agreement and the Council institutions to which the European Commission submitted periodical reports.

3. Criticism of the European Commission regarding the transposition of the acquis in the field of non-discrimination and NCCD's independence

11.3.1. Starting from the end of 1998, the European Commission has regularly monitored the progress of EU candidate countries from Central and Eastern Europe in the process of preparing the accession. With regard to Romania, the Commission has published every year the Periodical Report regarding the process of accession to the Union, monitoring, among others especially Romania's alignment to the acquis in the field of non-discrimination. **In this regard, are presented below the conclusions of the European Commission in 2000-2005 regarding the National Council for Combating Discrimination and the transposition of the acquis.**

1 See Accession Partnership with Romania (1999, revised February 2000) - political criteria/human rights; 4.2 Medium term: Political criteria: ”(…) implement measures aimed at fighting discrimination (including within the public administration)”.

2 See the European Journal of the European Communities, L44/82, 14.2.2002, Council Decission on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Romania (2002), Political criteria, Human rights and minority protection, “(…) Establish and ensure the due functioning of institutions to prevent and combat all forms of discrimination (…)”.

3 See the European Journal of the European Communities, L145/26, 12.6.2003, Council Decission on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Romania; “Continue alignment of the acquis on anti-discrimination and ensure its proper implementation by making the Romanian National Council for Combating Discrimination fully operational”.

The Periodical Report of the European Commission in 2000: „**significant efforts are required in order to transpose the acquis**".

11.3.2. The European Commission was pleased about the adoption of Government Ordinance no. 137/2000, setting down in its Report from 2000 that „there has been a significant progress in September, through the adoption by the Government of the legislation regarding the prohibition of discrimination by civil servants, individuals, private companies, undertakings on grounds of nationality, race, ethnic origin, age, gender and sexual orientation. Severe sanctions were stipulated for breaching the provisions in question. This initiative is a very positive step, **but a secondary legislation and review of institutional aspects will be necessary before the Ordinance provisions become applicable**. It is therefore too early to assess the effectiveness of this measure"[4]. In the same regard, it is shown that „the implementation of this legislation which, inter alia pursues to transpose the provisions of the EC Directive, pursuant to art. 13 of the Treaty, as regards discrimination on grounds of general or ethnical origin **will require significant efforts and continuous attention**".[5]

The 2001 Periodical Report of the European Commission: „**non-operational legislation and the National Council for Combating Discrimination has not been established**".

11.3.3. The European Commission reaffirms the importance of the adoption of Government Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination, considering that broadly, the law is in line with Directive 78/2000 and with the recent recommendations of the European Commission against Racism and Intolerance, but it finds that „**the Ordinance is non-operational because secondary legislation has not been adopted and the National Council for Combating Discrimination has not been established**"[6].

The 2002 Periodical Report of the European Commission: „**NCCD is not an independent institution**".

11.3.4. In 2002, the European Commission expressly states its preoccupation for the status of the National Council for Combating Discrimination, as established through G.O. no. 137/2000 and consequently through G.D. no. 1194/2001 and G.D. no. 1514/2002. The Report of the Commission underlines that „it is necessary to amend legislation in order to comply with the acquis pursuant to art. 13 of the EC Treaty and with regard to **NCCD** it states that „**in practice it is not an independent institution since it is administratively subordinated to the Government**".[7]

4 See Regular Report from the Commission on Romania's Progress towards accession; 8 November 2000; pagina 21, "In September 2000, one important development was the introduction, by government ordinance, of new legislation prohibiting discrimination by public employees, individuals, private companies and economic operators on the grounds of nationality, race, ethnicity, age, gender, or sexual orientation. Heavy fines have been established for violating its provisions. This initiative is a very positive step – but both further secondary legislation and revised institutional arrangements will be necessary before the provisions contained in the ordinance can be applied. It therefore remains too early to assess the effectiveness of this measure".

5 See Idem; page. 59 "The implementation of this legislation (which, inter alia,aims to transpose the provisions of the EC Directive, based on Art. 13 of the Treaty, relative to discrimination on the grounds of race or ethnic origin), will require substantial effort and continuous attention".

6 See 2001 Regular Report from the Commission on Romania's Progress towards accession, 13.11.2001; page 22 "(…) The ordinance covers rights defined in relevant international agreements and is broadly in line with the Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of their Racial and Ethnic Origin as well as recent recommendations of the European Commission against Racism and Intolerance. However the ordinance is not yet operational since the necessary secondary legislation has not been adopted and the implementing body, the National Council for Preventing and Combating Discrimination, has not yet been established. Despite these delays, this legislation should, when implemented, represent a positive development by providing legal protection against discrimination on various grounds, including ethnic origin, language, religion and sexual orientation".

7 See 2002 Regular Report from the Commission on Romania's Progress towards accession, 9.10.2002; page 29; "However, amendments to the law will be needed in order to fully conform with the acquis based on Article 13 of the EC Treaty, notably with regard to indirect discrimination and the burden of proof. (…) The decision setting up the Council states that it will operate independently of any institution or public authority. **However, in practice it is not an independent body as it remains administratively subordinated to the Government** *" și pagina 85 "The National Council for Combating Discrimination was established in August 2002. These are positive developments although amendments to the law will be needed in order to fully conform with the acquis".*

The 2003 Periodical Report of the European Commission: „**NCCD remains subordinated to the Government (…) the capacity to act independently is limited**”.

11.3.5. The 2003 Commission Report is pleased about the significant progress of the National Council for Combating Discrimination „in its first year of activity and the ruling of sanctions in discrimination cases, which were an important expression of the Council's authority”. The Commission further underlines that „the new legal provisions have clarified the responsibilities of the Council, but a few legislative aspects remain unsolved. The legal framework must be revised in order to clarify the role of the Council in relation to public institutions”. The issue of the lack of independence is re-stated by the European Commission and „as it noted in the previous Periodical Report „**the fact that NCCD remains administratively subordinated to the Government seems to limit its capacity to act independently**”. [8]. In the Report, the European Commission states that „it should be noted that among the candidate countries, Romania is the first that has an operational equality institution”.[9]

The 2004 Periodical Report of the European Commission: „**NCCD's capacity should be strengthened**”.

11.3.6. The European Commission analyzes the activity of preventing and combating discrimination carried out by NCCD, stating, among others that „the institution has proven its decision-making capacity: courts confirming the existence of discrimination in disputed solutions, although the sanctions applied were annulled in a few cases”. „The new legislative provisions adopted in February 2004 represented a progress in the transposition of the acquis in the field of non-discrimination, but some elements of an efficient anti-discrimination mechanism, such as the reversal of the burden of proof or statistical data for proving indirect discrimination are still missing”. Also, the European Commission underlines that „**the capacity of the National Council for Combating Discrimination should be strengthened**”[10] (see in this regard Annex 5).

The 2005 Periodical Report of the European Commission: „**NCCD's independence must be guaranteed**”.

11.3.7. The European Commission underlines that in the field of non-discrimination, legislation still requires completions regarding the reversal of the burden of proof, in order to settle an efficient mechanism in Romania and draw attention particularly on strengthening the administrative capacity of the National Council for Combating Discrimination, on providing financing for the institution, transparency **and especially „guaranteeing independence”**[11].

8 See 2003 Regular Report from the Commission on Romania's Progress towards accession, page 22 "The National Council for Combating Discrimination has made significant progress during its first year of activity and the issuing of decisions sanctioning cases of discrimination has been an important demonstration of its authority. New legal provisions have clarified the responsibilities of the National Council. However, a number of the gaps in the legislative framework raised in last year's Regular Report have not been resolved (i.e. indirect discrimination and the burden of proof). The legal framework also needs to be revised in order to clarify the role of the National Council vis-à-vis other public institutions. As noted in last year's Regular Report, **the fact that the National Council remains administratively subordinated to the government appears to limit its capacity to act independently** *(…)".*

9 See Idem, page 79; "It should be noted that among the acceding and candidate countries Romania is the first to have a functioning equality body".

10 See 2004 Regular Report from the Commission on Romania's Progress towards accession, 6.10.2004, pag.23 si 95 "The National Council for Combating Discrimination (NCCD) has continued its policy to prevent discriminatory actions. New legal provisions adopted in February 2004 represented further progress with the transposition of the anti-discrimination acquis. However, despite several legislative improvements, some elements of an efficient antidiscrimination mechanism, such as the shift of the burden of proof or acceptance of statistical data as evidence of indirect discrimination, are still lacking. Nevertheless, the NCCD proved its capacity to get support for its decisions: court decisions have usually confirmed the existence of discrimination in the cases contested - although the fines applied by NCCD have been invalidated in several cases. Notwithstanding the progress made, the capacity of the National Council for Combating Discrimination could also be enhanced.

11 See 2005 Regular Report from the Commission on Romania's Progress towards accession, pag. 54, 55; "Legislative alignment in the field of anti-discrimination is still to be completed especially as regards the shift of the burden of proof in order to have in place an efficient anti-discrimination mechanism in Romania. The overall administrative capacity of the **National Council for Combating Discrimination** *should be enhanced, including funding, transparency and general awareness of its activities,* **and its independence should be guaranteed***".*

Particularly, the European Commission draws attention that „the Romanian authorities should demonstrate, at all levels, that they apply a zero tolerance policy on racism against the Roma or other minorities or groups and that this policy is effectively implemented".[12]

4. The process of transposition of the acquis in 2006 and ensuring the independence of the National Council for Combating Discrimination

11.4.1. Following successive amendments brought to Government Ordinance no. 137/2000 through Law no. 48/2002, Government Ordinance no. 77/2003 and through Law no. 27/2004, the minimum standards stipulated in the European Directives were partly transposed in the Romanian legislation however, **as the European Commission stated in its reports, there are pending disagreements between the internal law and the provisions of the acquis communautaire**, i.e. of Council Directives 2000/78/EC and 2000/43/EC and for this reason, anti-discrimination legislation still requires amendments (Periodical Reports of the European Commission, 2001-2006).

11.4.2. Considering **the eventual risk that at the date of accession of Romania to the European Union on 1st January 2007, the non-discrimination legislation would not be in compliance with the acquis**, on 14 July 2006 was adopted Law no. 324/2006, an organic law, by which the standards in the non-discrimination field were significantly amended, particularly as regards the status of the national institution appointed to monitor and implement relevant legislation, the National Council for Combating Discrimination.

11.4.3. **Law no. 324/2006** amending and supplementing Government Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination, published in the Official Gazette of Romania, Part I, no. 626 of 20 July 2006 stipulates expressly that it **transposes the provisions of Council Directive 2000/43/EC implementing the principle of equal treatment between persons, irrespective of racial or ethnical origin**, published in the Official Journal of the European Communities (OJEC) no. L180 of 19 July 2000 and **the provisions of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation**, published in the Official Journal of the European Communities (OJEC) no. L303 of 2 December 2000.

5. Modification of NCCD's status in 2006

11.5.1. In order to transpose the acquis communautaire and consequently to eliminate constant criticism from the European Commission, the European Commission against Racism and Intolerance, the Advisory Committee of the Framework Convention for the Protection of National Minorities and from other international institutions, **the Romanian legislator regulated the institutional aspects advised and aligned the National Council for Combating Discrimination, as regards its status, to international standards**.[13]

11.5.2. Thus, pursuant to amendments brought by Law no. 324/2006, the National Council for Combating Discrimination is **the national authority that investigates and contraventionally sanctions** discrimination acts or deeds, **autonomous**, with legal personality, **under the Parliament's control** and at the same time a guarantor of the observance and

12 See Idem, pag. 19 "The Romanian authorities should demonstrate, at all levels, that the country applies a zero-tolerance policy on racism against Roma or against any other minority or group and that this policy is effectively implemented".

13 Directive of the Council of the European Union no. 43/2000, Recommendation of the European Commission against Racism and Intolerance no. 2 and Recommendation no. 7, Resolution of UN's General Assembly no. 48/134 of December 1993, „The Paris Principles" regarding measures for establishing national institutions of human rights.

enforcement of the non-discrimination principle, according to internal legislation in force and the international documents to which Romania is a party[14].

11.5.3. The Council is responsible for the enforcement and control of observance of legal provisions in its field of activity, as well as for the **harmonization of provisions of laws or administrative acts** that infringe the non-discrimination principle. [15]

11.5.4. The Council **elaborates and applies public policies in the field of non-discrimination**. In this regard, the Council **consults with public authorities, non-governmental organizations, trade unions and other legal entities** which pursue to protect human rights or have a legitimate interest in combating discrimination.[16]

11.5.5. In exercising its powers, the National Council for Combating Discrimination **operates independently**, without having its activity restricted or influenced by other institutions or public authorities[17]. In order to combat discrimination deeds, the National Council for Combating Discrimination exercises its powers in the following fields: **prevention of** discrimination **deeds**; **mediation** of discrimination deeds; **investigation, ascertaining and sanctioning** of discrimination deeds; **monitoring** of discrimination cases; offering **specialized assistance** to the victims of discrimination.[18]

6. The point of view of the European Commission on the amendments adopted by Law no. 324/2006 by the Romanian Parliament and NCCD's independence status

11.6.1. Following the analysis of amendments brought by Law no. 324/2006, in the Communication of the European Commission of 26 September 2006, included in the Monitoring Report regarding the situation of preparedness of Bulgaria and Romania for accession to the European Union, chapter Political Criterion, point 2, „Other issues which requested a subsequent progress in May 2006”, The European Commission mentions expressly: „The **law** on preventing and combating all forms of discrimination **was amended in order to comply with the standards of the European Union** regarding the **independence** of the National Council for Combating Discrimination” **[19].**

7. Modification of NCCD's powers regarding notifications on legislative measures under the remuneration policy

11.7.1. Through Emergency Ordinance no. 75 of 11 June 2008 on establishing measures to settle certain financial aspects in the system of justice, art. 19 of G.O. no. 137/2000, republished was amended.

11.7.2. According to art. V of Government Emergency Ordinance no. 75/2008:

14 See art. 16 of Law no. 324/2006 amending and supplementing Government Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination, published in the Official Gazette of Romania, Part I, no. 626 of 20 July 2006.

15 See art. 18 par. 1 of Law no. 324/2006.

16 See art. 18 par. 2 of Law no. 324/2006.

17 See art. 17 of Law no. 324/2006.

18 See art. 19 par. 1 of Law no. 324/2006.

19 See COMMUNICATION FROM THE COMMISSION, Monitoring report on the state of preparedness for EU membership of Bulgaria and Romania, Brussels, 26/09/2006, COM (2006), 2. OTHER ISSUES WHICH NEEDED FURTHER PROGRESS IN MAY 2006; 2.1 Political criteria, Protection and integration of minorities; pag. 40: "(…) The law on preventing and sanctioning all forms of discrimination has been amended to meet EU standards related to the independence of the National Council for Combating Discrimination".

„In Government Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination, republished in the Official Gazette of Romania, Part I, no. 99 of 8 February 2007, after par. (2) of article 19 shall be introduced a new paragraph (3) with the following content: (3) The notifications **regarding legislative measures** adopted under the **remuneration policy** of budgetary personnel **do not fall under the jurisdiction** of the National Council for Combating Discrimination."

11.7.3. Through **law no. 76 of 1 April 2009**, published in the Official Gazette no. 231 of 8 April 2009, approving Emergency Ordinance no. 75/2008, **art. V of GEO no. 75/2008 was repealed**.

8. Judgment of the Constitutional Court on NCCD's capacity regarding discrimination stemming from law

11.8.1. Through Ruling of 14 April 2008, delivered in File no. 7604/99/2007, **the Court of Appeal Iasi** - Section of contentious and fiscal matters **notified the Constitutional Court with the exception of unconstitutionality** regarding the provisions of art. 20 of Government Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination. The exception was stated by the Ministry of Justice on the occasion of settling the appeal filed against Civil Judgment no. 16/CA of 10 January 2008, delivered by Iasi Tribunal in File no. 7.604/99/2007, by which Iasi Tribunal, Iasi Court of Appeal and Ministry of Justice were forced to pay salary entitlements resulting from wage differences ascertained through Decision no. 151 of 21 June 2007 of the National Council for Combating Discrimination.

11.8.2. Through judgment no. 997 of 7 October 2008, published in the Official Gazette no. 774 of 18.11.2008, the Constitutional Court admitted the unconstitutionality exception stated by the Ministry of Justice settling that „(…) the provisions of art. 20 par. 3 of Government Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination **are unconstitutional to the extent they are interpreted** as granting to the National Council for Combating Discrimination **the jurisdiction within its jurisdictional activity of cancelling or refusing to apply certain official laws,** considering them discriminatory and replacing them with norms generated through judicial activity or with provisions contained in other laws".

11.8.3. The Constitutional Court set down some aspects, among which: "The Court finds that, in order to fulfill its role of guarantor of the observance and enforcement of the non-discrimination principle, the National Council for Combating Discrimination is called to also watch the way in which this principle is observed within laws. In this regard, this body may ascertain the existence of discriminatory legal provisions and can express its opinion regarding the harmonization of provisions within laws or administrative acts with the non-discrimination principle. Are relevant here the outcomes of such opinions. Thus, if it was admitted that by way of the jurisdictional control based on art. 20 par. (3) of Government Ordinance no. 137/2000, the National Council for Combating Discrimination is able to ascertain the existence of discriminatory situations which stem directly from the content of legal provisions, the Council's decision would result in ending the application of such provisions and even in the application by analogy of other provisions, which would not refer to the person or social group who are discriminated. In such a circumstance, is questioned the legitimacy of this body of interfering with the legislative power through eliminating the application of certain laws and establishing the application of others, but also with the

jurisdiction of the Constitutional Court, which fulfills the role of negative legislator when it finds the lack of compliance between the provisions of a law or ordinance and constitutional provisions, under art. 16 relating to the non-discrimination principle.

Although in light of the constitutional provisions such an interpretation cannot be accepted, as the role of the National Council for Combating Discrimination is rather limited to the possibility of ascertaining the existence of discrimination in the content of certain laws and to delivering recommendations or notifying the authorities competent to amend those laws, it is however noticed, as set down above that in practice, art. 20 par. (3) of Government Ordinance no. 137/2000 generated unconstitutional effects, by which the principle of separation of state powers was breached, to this contributing the equivocal wording of the provisions laid down in Section VI of Government Ordinance no. 137/2000.

For these reasons, the Court ascertains that the provisions of art. 20 par. (3) of Government Ordinance no. 137/2000 are unconstitutional to the extent they are interpreted as granting to the National Council for Combating Discrimination the competence that, within its jurisdictional activity, it may repeal the text of certain discriminatory laws or even replace this text with provisions contained in other laws”.

9. Clarification of NCCD’s status regarding breaching the principle of separation of state powers and the nature of “extraordinary court”

11.9.1. The most significant clarification of the legal nature of the National Council for Combating Discrimination was released in 2008 by the Constitutional Court of Romania. Following an exception of unconstitutionality of the provisions of art. 16-25 of G.O. no. 137/2000, republished, through Judgment of the Constitutional Court of Romania no. 1.096 of 15 October 2008, published in the Official Gazette no. 795 of 27 November 2008, the Constitutional Court ruled with on the legal nature of NCCD as regards the observance of constitutional provisions. The Constitutional Court settled among others the following:

„The National Council for Combating Discrimination is an administrative body with jurisdictional prerogatives, which enjoys the necessary independence to fulfill the administrative-jurisdictional act and observes the constitutional provisions laid down in art. 124 regarding the administration of justice and in art. 126 par. (5) which forbids the setting up of extraordinary courts”. [20]

„The Council exercises its prerogatives independently, free from any influence by any body or public authority, by observing the provisions of art. 1 par. (4) of the Constitution which enshrines the principle of separation and balance of state powers within the constitutional democracy”.[21]

10. Restatement of NCCD’s constitutional status

11.10.1. Through **Judgment no. 444 of 31 March 2009**[22], the Constitutional Court settled that in this case „the National Council for Combating Discrimination is an administrative body with **jurisdictional prerogatives**, which enjoys the necessary **independence** to fulfill the administrative – jurisdictional act”, „thus being observed the constitutional provisions laid down in art. 126 par. (5) which forbids the setting up of extraordinary courts”.

20 Judgment of the Constitutional Court of Romania no. 1.096 of 15 October 2008, published in the Official Gazette no. 795 of 27 November 2008.

21 Idem

22 Judgment no. 444 of 31 March 2009, published in the Official Gazette no. 331 of 19 May 2009.

11.10.2. Through **Judgment no. 1470 of 10 November 2009**[23], the Constitutional Court settled that „the **jurisdiction** of the National Council for Combating Discrimination **is not obligatory,** since the law does not stipulate the obligation of the injured person to pursue an administrative-jurisdictional procedure **prior to notifying** the court, but only a possibility of **choosing** between the two ways of pursuing the right, thus it is not a case of infringement of the text of art. 21 par. (4) of the Constitution".

11.10.3. Through **Judgment no. 1494 of 10 November 2009**[24], the Constitutional Court settled that the provisions of art. 20 par. 8-10 of G.O. no. 137/2000 regarding the release of the **Committee's decision** and the **term to dispute** such decision **meet the requirements** of constitutional norms, as they fully **comply** with the provisions of art. 16, art. 21 and art. 24 of the Constitution and with those of art. 6 of the Convention for the protection of human rights and fundamental freedoms.

11. Conclusions

11.11.1. The **modification** of the status of the National Council for Combating Discrimination from that of **specialized body of central Government**, subordinated to the Government, in that of **state authority**, autonomous, **under the Parliament's control** (art. 16, art. 17, art. 18 of Law no. 324/2006), as it results from the conclusions of the European Commission **complies with the independence standard** stipulated by European legislation in the field of non-discrimination.

11.11.2. The Council **investigates, ascertains and monitors** discrimination deeds (art. 19 par. 1 lett. c, lett. d of Law no. 324/2006) according to **Council Directive no. 2000/43/EC** (art. 13 par. 2, second statement), **ECRI Recommendation no. 7** (Chapter 5, point 24), **Resolution of UN's General Assembly no. 48/134 of 1993** (Chapter Principles regarding the statute of commissions with quasi-jurisdictional prerogatives).

11.11.3. The Council carries out **yearly activity reports, independent**, **which are submitted for debate and approval to the Parliament** (art. 22 par. 2 of Law no. 324/2006) according to **ECRI Recommendation no. 2** (Chapter 5, Principle 5, point 3) and to **Council Directive no. 2000/43/EC** (art. 13 par. 2, final statement), **Resolution of UN's General Assembly no. 48/134 of 1993** (Chapter Competences and responsibilities, point 3, lett. a).

11.11.4. The Council offers **specialized assistance to the victims** of discrimination (art. 19 par. 1 lett. e) according to **ECRI Recommendation no. 7** (Chapter 5, point 24) and **Council Directive no. 2000/43/EC** (art. 13 par. 2 , first statement).

11.11.5. The Council elaborates and applies **public policies** and is responsible for the **harmonization of the provisions of laws or administrative acts** in the field of non-discrimination (art. 18 par. 1 and par. 2 of Law no. 324/2006) **according** to **Council Directive no. 2000/43/EC** (art. 13 par. 2 final statement) and **ECRI Recommendation no. 7** (Chapter 5, point 24), **Resolution of UN's General Assembly no. 48/134 of 1993** (Chapter Competences and responsibilities, point 3 lett. a and lett. b).

23 Judgment no. 1.470 of 10 November 2009, published in the Official Gazette no. 887 of 18 December 2009.
24 Judgment no. 1.494 of 10 November 2009, published in the Official Gazete no. 909 of 24 December 2009.

XII. Dialogue with non-governmental organizations (ARTICLE 14) and national transposition law

1. „DIALOGUE WITH NGO'S” IN THE FRAMEWORK DIRECTIVE

12.1.1. According to art. 14 of the framework Directive:

> Member States **shall encourage dialogue** with appropriate **non-governmental organisations** which have, in accordance with their national law and practice, **a legitimate interest** in contributing to **the fight against discrimination** on any of the grounds referred to in Article 1 with a view to promoting the principle of equal treatment.

2. "CONSULTATION OF NGO'S" AND THE NATIONAL LAW

12.2.1. According to art. 18 par. 1 and 2 of G.O. no. 137/2000 republished:

> Art. 18: „The Council is responsible for enforcing and controlling the observance (...)of the law (n.n. in its field of activity). (2) The Council draws up and enforces public policies in the field of non-discrimination. For this purpose, the Council **shall consult** with public authorities, **non-governmental organizations, trade unions and other legal entities pursuing human rights protection or having a legitimate interest in combating discrimination.**

XIII. Sanctions in the framework Directive (ARTICLE 15) and national transposition law

1. „SANCTIONS” IN THE FRAMEWORK DIRECTIVE

11.1.1. According to art. 17 of the Framework directive:

> Member States shall lay down the rules on **sanctions applicable to infringements of the national provisions adopted pursuant to this Directive** and shall take all measures necessary to ensure that they are applied. The **sanctions**, which may comprise the payment of compensation to the victim, must be **effective, proportionate and dissuasive**. Member States shall notify those provisions to the Commission by 2 December 2003 at the latest and shall notify it without delay of any subsequent amendment affecting them.

2. SANCTIONS STIPULATED BY NATIONAL LEGISLATION

11.2.1. According to art. 26 par. 1 and 2 of G.O. no. 137/2000, republished, the perpetration of contraventions stipulated by this law draws, as appropriate, sanctioning by **warning or contraventional fine**.

> Art. 26: (1) The contraventions stipulated by art. 2 par. (5) and (7), art. 5-8, art. 10, art. 11 par. (1), (3) and (6), art. 12, art. 13 par. (1), art. 14 and 15 shall be sanctioned with a **fine between 400 lei and 4.000 lei**, if the discrimination regards an **individual** and with a **fine between 600 lei and 8.000 lei** if the discrimination regards **a group of persons or a community**. (2) The sanctions shall also be applied to legal persons.

CHAPTER II

COMPLAINTS AND FINDINGS OF DISCRIMINATION ON GROUNDS OF CRITERIA UNDER DIRECTIVE 2000/78/EC

I. Complaints filed to NCCD under national anti-discrimination law

The number of complaints filed to NCCD since its setting up (August 2002) until the date of reporting (December 2010) is 4453. This number includes complaints filed based on all discrimination criteria forbidden by national law.

Fig. 1 Complaints filed to NCCD

	2002	2003	2004	2005	2006	2007	2008	2009	2010
Criterion									
Non-contagious chronic disease	0	0	6	2	3	2	4	2	0
Sexual orientation	**1**	**5**	**6**	**9**	**6**	**7**	**6**	**6**	**4**
HIV infection/Aids	0	1	15	10	5	3	7	1	3
Language	0	2	1	2	2	7	11	13	16
Convictions	**4**	**12**	**23**	**19**	**8**	**10**	**14**	**13**	**4**
Religion	**2**	**9**	**9**	**11**	**8**	**12**	**15**	**6**	**6**
Disadvantaged category	2	0	10	6	4	26	22	9	7
Age	**6**	**11**	**14**	**17**	**10**	**10**	**24**	**10**	**9**
Gender (Sex)	3	14	13	9	11	22	32	9	18
Nationality	1	12	21	39	20	39	54	28	42
Disability	**3**	**31**	**18**	**21**	**20**	**70**	**55**	**49**	**38**
Ethnic origin	34	66	45	85	69	82	62	62	54
Others	52	184	108	61	132	32	159	96	83
Race	0	0	1	1	2	0	0	2	1
Social category/ Socio-professional	26	126	63	90	132	514	372	222	193
Total	**134**	**473**	**353**	**382**	**432**	**836**	**837**	**528**	**478**

The table above (Fig. 1) shows trends recorded yearly, the complaints filed to NCCD increasing progressively, the maximum being reached in 2008. In 2009, there was a decrease in the number of complaints, to a large extent explained through the amendment of anti-discrimination legislation (G.O. NO. 137/2000, republished), especially G.E.O. no. 75/2008 which defined NCCD's jurisdiction regarding legislative measures in the field of remuneration

of the budgetary personnel and Judgment of the Constitutional Court no. 997/2008 which settled that NCCD has no jurisdiction to rule on discrimination stemming directly from the content of laws [25].

The decreasing proportion of complaints filed to NCCD in 2009 is also reflected in the number of complaints concerning discrimination based on the socio-professional category. If in 2007, of the total 836 complaints, 515 concerned social and socio-professional categories, in 2008 the number of these complaints decreased to 372 and in 2009 to 222. Thus, it was recorded a decrease of around 50% of complaints on discrimination based on this criterion compared to 2007 and of around 40% compared to 2008. The explanation for this decrease, in NCCD's opinion is tightly related to the modification of NCCD's competences by way of legislative control, following the constitutionality control.

II. Complaints filed to NCCD on grounds of religion, convictions, disability, age, sexual orientation

Of all **4453** complaints filed to NCCD (2002 – 2010), around **651** complaints concerned discrimination on grounds of religion or convictions, disability, age and sexual orientation. **305** complaints concerned discrimination on disability grounds, **185** on religious affiliation or convictions, **111** complaints on grounds of age and around **50** complaints on sexual orientation grounds.

Fig. 2	**Complaints filed to NCCD on the grounds of Directive 2000/78/EC**								
	2002	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**
Criterion									
Religion	2	9	9	11	8	12	15	6	6
Convictions	4	12	23	19	8	10	14	13	4
Disability	3	31	18	21	20	70	55	49	38
Age	6	11	14	17	10	10	24	10	9
Sexual orientation	1	5	6	9	6	7	6	6	4
Total complaints	**16**	**68**	**70**	**77**	**52**	**109**	**114**	**84**	**61**

In relation to the total number of complaints filed to NCCD and compared to those filed on grounds of religion, convictions, disability, age and sexual orientation, a relevant percentage is held by notifications regarding discrimination on disability grounds (between 5-9%). Their percentage is significantly higher in relation to those concerning sexual orientation or religious affiliation. Only in 2004-2005 there was a relatively close number of complaints on grounds of disability, age and convictions (around 5%). In the other years, there were differences of three-four percentages.

25 For details see Chapter 1 Measures of transposition of Directive 2000/78/EC in national legislation, Section XI bis NCCD and compliance with standards of institutional independence in the context of Directive 2000/43/EC, point 7 and point 8.

Fig. 3	Percentage of complaints filed to NCCD on grounds of Directive 2000/78/EC								
	2002	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**
Criterion									
Religion	1,49%	1,90%	2,54%	2,87%	1,85%	1,43%	1,79%	1,13%	1,25%
Convictions	2,98%	2,53%	**6,51%**	**4,97%**	1,85%	1,19%	1,67%	2,46%	0,83%
Disability	2,23%	**6,55%**	**5,09%**	**5,49%**	**4,62%**	**8,37%**	**6,57%**	**9,28%**	**7,94%**
Age	**4,47%**	2,32%	3,96%	**4,45%**	2,31%	1,19%	2,86%	1,89%	1,88%
Sexual orientation	0,74%	1,05%	1,69%	2,35%	1,38%	0,83%	0,71%	1,13%	0,83%
Total NCCD complaints	**134**	**473**	**353**	**382**	**432**	**836**	**837**	**528**	**478**

III. Solutions of admitting complaints on grounds of religion, convictions, disability, age, sexual orientation

Given the scope of national law (protection against discrimination beyond the objective of Directive 2000/78/EC – labour relationships), NCCD ascertained discrimination deeds falling under employment relationships, but also in relation to access to goods and services or other fields (social protection, health, education, protection of personal dignity).

Fig. 4	Discrimination complaints and ascertainments (ex officio): RELIGION/CONVICTIONS								
	2002	2003	2004	2005	2006	2007	2008	2009	2010
No. of complaints	6	21	32	30	16	22	29	19	10
No. of ascertainments labour	-	**1**	**2**	**4**	**1**	**2**	**4**	**3**	**1**
No. of ascertainments goods, services, dignity	-	-	-	**2**	**1**	**3**	-	**2**	**1**
Percentage	-	**3,84%**	**6,25%**	**20%**	**12,6%**	**22,7%**	**13,7%**	**26,3%**	**20%**

Fig. 5	NCCD complaints and ascertainments (ex officio) discrimination: DISABILITY								
	2002	2003	2004	2005	2006	2007	2008	2009	2010
No. of complaints	3	31	18	21	20	70	55	49	38
No. of ascer-tainments labour	-	-	**1**	**1**	-	**3**	-	**4**	**1**
Goods, services, dignity	-	-	-	**2**	**2**	**3**	**5**	**3**	**6**
Percentage	-	-	**5,5%**	**14,2%**	**10%**	**8,5%**	**9,09%**	**18,5%**	**18,4%**

Fig. 6	NCCD complaints and ascertainments (ex officio) discrimination: AGE								
	2002	2003	2004	2005	2006	2007	2008	2009	2010
No. of complaints	6	11	14	17	10	10	24	10	9
No. of ascertainments labour	-	**12**[26]	**5**	**16**	**5**	**5**	**5**	-	**1**
Goods, services, dignity	-	**1**	-	-	**1**	-	**2**	-	**1**
Percentage		**54,4%**	**35,7%**	**94,1%**	**60,0%**	**50,0%**	**29,1%**	-	**22,2 %**

Fig. 7	NCCD complaints and ascertainments discrimination: SEXUAL ORIENTATION								
	2002	2003	2004	2005	2006	2007	2008	2009	2010
No. of complaints	1	5	6	9	6	7	6	6	4
No. of ascertainments labour	-	-	-	-	-	**1**	-	-	-
Goods, services, dignity	-	-	**1**	**4**	-	**2**	**1**	**1**	**1**
Percentage	-	-	**16,6%**	**44,4%**	-	**42,8%**	**16,6%**	**16,6%**	**25%**

IV. Fields in which discrimination was exhibited in cases ascertained by NCCD

As it can be noted from Fig, 8, most discrimination cases concerned employment requirements, especially those that imposed selection criteria based on age, without being an occupational requirement for that position. For most persons with disabilities, the majority of cases took into account not providing the reasonable accommodation in the access to competitions for filling a positions and not providing the reasonable accommodation at work. Personal convictions (in particular political convictions) constituted in some cases reasons for deciding disciplinary inquiries and ultimately for terminating the labour agreement. As regards discrimination on grounds of sexual orientation, one case was found regarding the disclosure of the sexual orientation of an employee, i.e. the disciplinary inquiry and sanctioning on this ground.

26 *In 5 cases discrimination was ascertained as a result of complaints and in 7 cases as a result of NCCD's self-notification*

Fig. 8	Discrimination fields in cases UNDER Directive 2000/78/EC			
	Religion/convictions	**Disability**	**Age**	**Sexual orientation**
Fields				
Employment announcement/Requirements	**1**	**-**	**32**	**-**
Competition/Requirements/Refusal	**3**	**1**	**6**	**-**
Disciplinary inquiry/Sanctions	**5**	**-**	**-**	**1**
Termination of labour agreement	**4**	**1**	**4**	**-**
Demotion	**1**	**-**		**-**
Promotion	**1**	**-**	**3**	**-**
Vocational training	**-**	**-**	**3**	**-**
Wage	**3**	**-**		**-**
Not adapted workplace	**-**	**2**		**-**
Retirement requirements	**-**	**1**	**1**	**-**
Total	**18**	**10**	**49**	**1**

With regard to discrimination cases ascertained by NCCD, but which are beyond the scope of Directive 2000/78EC, these can be followed in the tables below:

Fig. 9	Discrimination fields in cases NOT UNDER the framework Directive			
	RELIGION/CONVICTIONS			
Fields				
Access to public services	**Education**	**Access to public places**	**Dignity**	
Granting of burial place **1**	School manual content **1**	Swimming pool **1**	Public statements **1**	
Granting of land plot church **1**	Study rooms. Symbols **1**			
Granting of funds cults **1**				
Public interest information **1**				
Total	**9**			

Fig. 10	Discrimination fields in cases NOT UNDER the framework Directive			
	DISABILITY			
Fields				
Access to public services	**Education**	**Access to goods and services**	**Dignity**	
Social services (home) **1**	Exclusion from class **1**	Taxi transport **1**	Public statements **1**	
Medical services (treatment) **1**	Enrollment refusal **1**	Free transport **1**	Public posting **1**	
Classification of disability level **1**		Signaling system **1**		
Taxation (benefit) **3**		Access to cabinet **1**		
Social rights **3**		Banking account and card **2**		
Accessible parking **1**		Bank loan **1**		
Public interest information **1**				
Total	**22**			

Fig. 11	Discrimination fields in cases NOT UNDER the framework Directive				
AGE					
Fields					
Access to public services	**TV contest**		**Access to goods and services**		**Dignity**
Medical services (treatment) 2	Participation requirements	**1**	Swimming pool	**1**	-
			Owners' association	**1**	
Total		**5**			

Fig. 12	Discrimination fields in cases NOT UNDER the framework Directive		
SEXUAL ORIENTATION			
Fields			
Access to medical services	**Access to goods and services**		**Dignity**
Blood donor criteria **2**	Flight ticket facilities	**1**	Public statements **7**
Total	**10**		

- A summary of discrimination cases based on religious affiliation or convictions, disability, age or sexual orientation ascertained by the National Council for Combating Discrimination can be studied in the following chapter.

V. Discrimination forms in cases ascertained by NCCD

In the approximately 122 cases, NCCD ascertained different forms of discrimination including direct discrimination, indirect, multiple discrimination, the instruction to discriminate, harassment and victimisation. We must mention that in some cases were ascertained cumulatively several forms of discrimination. Also, we must mention that the national law, compared to Directive 2000/78/EC prohibits also the active or passive behaviour by which a group a person is put at disadvantage without justification or personal dignity is offended, based on the forbidden criteria, including those laid down in Directive 2000/78/EC.

Fig. 13	Discrimination forms in cases ascertained by NCCD			
EMPLOYMENT RELATIONSHIPS	**Religion/convictions**	**Disability**	**Age**	**Sexual orientation**
Form				
Direct discrimination	**12**	**7**	**38**	**1**
Indirect discrimination	**4**	**2**	**2**	**-**
Instruction to discriminate	**3**	**-**	**-**	**-**
Multiple discrimination	**-**	**-**	**14**	**-**
Harassment	**2**	**-**	**1**	**1**
Victimisation	**-**	**-**	**-**	**1**
Active or passive behaviour which puts at disadvantage	**4**	**3**	**22**	-

Fig. 14	Discrimination forms in cases ascertained by NCCD			
GOODS, SERVICES	**Religion/convictions**	**Disability**	**Age**	**Sexual orientation**
Form				
Direct discrimination	**5**	**16**	**6**	**6**
Indirect discrimination	**2**	**5**	**-**	**-**
Instruction to discriminate	**-**	**-**	**-**	**-**
Multiple discrimination	**-**	**-**	**-**	**-**
Harassment	**1**	**1**	**-**	**2**
Victimisation	**-**	**-**	**-**	
Active or passive behaviour which puts at disadvantage	**4**	**7**	**2**	5

VI. Sanctions applied in discrimination cases ascertained by NCCD

The National Council for Combating Discrimination did not adopt decisions ascertaining and sanctioning discrimination cases during 2002. NCCD became operational in August 2002. The sanctions applied by NCCD fall under the contraventional domain, including warning and fine. Considering NCCD's role, the Committee also adopted recommendations. In some cases, due to the elapsing of the limitation period or to other objective causes, no contraventional sanctions were applied.

Fig. 15	Sanctions applied in discrimination cases on grounds under Directive 2000/78/EC								
EMPLOYMENT	2002	2003	2004	2005	2006	2007	2008	2009	2010
RELATIONSHIPS									
Fine	-	**2**	-	**3**	**1**	**4**	-	**1**	-
Warning	-	**8**	**6**	**12**	**2**	**6**	**7**	**4**	-
Recommendation	-	-	**2**	**6**	**3**	**3**	**3**	**3**	**3**
Only ascertainment	-	**3**	**1**	**1**	-	-	-	**1**	-
Total									

Fig. 16	Sanctions applied in discrimination cases based on the criteria of Directive 2000/78/EC (not under the Directive)								
GOODS AND	2002	2003	2004	2005	2006	2007	2008	2009	2010
SERVICES									
Fine	-	-	-	**3**	-	-	**1**	**3**	**1**
Warning	-	**1**	**1**	**3**	**3**	**3**	**2**	**3**	**4**
Recommendation	-	-	-	**3**	**2**	**4**	**8**	**3**	**5**
Only ascertainment	-	-	-	**0**	-	**1**	-	-	-
Total									

CHAPTER III

CASE-LAW ASCERTAINING DISCRIMINATION ON GROUNDS UNDER DIRECTIVE 2000/78/EC

I. Case-law ascertaining discrimination under the scope of the national transposition law of Directive 2000/78/EC

Directive 2000/78/EC has the objective of establishing a general framework for combating discrimination on grounds of **religious affiliation or convictions, disability, age or sexual orientation** with regard to employment and occupation in order to implement the principle of equality of treatment in member states[27]. National law in the field of non-discrimination concerns conditions of employment, criteria and requirements of employment, selection and promotion, access to all forms and levels of guidance, training and professional re-training and prohibits discrimination based on religion, convictions, sexual orientation, age, disability.[28]

1. Discrimination in the field of labour on grounds of RELIGION or CONVICTIONS

(2003) **Employment relationships. Protest action. Adverse treatment. Measures against the employee. Convictions.** F.G. complained against company S.N.C. regarding the treatment undergone as a result of his participation to a protest action against the economic measures taken by the company. The respondent took against the petitioner measures of demotion, salary decrease, transfer to another workplace and disciplinary measures. Through **decision no. 76 of 11.03.2003**, the Committee set down that the notification takes the form required by G.O. no. 137/2000 in order to be qualified as a **discriminatory** deed, ascertaining the infringement of provisions of art. 6 lett. a and b of G.O. no. 137/2000. Since from the date of deed perpetration over 6 months elapsed, the term for applying the sanction was lost by limitation. (art. 2 par. 1, art. 6 lett. a and b of G.O. no. 137/2000).

(2004) **Labour relationships. Promotion. Apparently neutral criterion. Differentiated treatment. Political convictions.** Mr. B.C.D. complained about the fact that within the company he works for he was treated differently with regard to access to employment and promotion, because of his political beliefs manifested through the participation in local elections. Despite the professional qualifications held and expertise certified he was not promoted, unlike other employees. Through **decision no. 149 of 21.05.2004**, the Committee found that the notified deeds are **indirect discrimination,** according to art. 2 par. 3 of G.O. no. 137/2000. amended through G.O. no. 77/2003 and art. 6 lett. d of G.O. no. 137/2000. The contraventional sanction of **warning** (art. 2 par. 3, art. 6 of G.O. no. 137/2000, subsequently amended and supplemented) was applied against the respondent.

(2004) **Competition for admission to the profession. Organization. Considering the elements of religious freedom.** Ms. R.C. applied to NCCD regarding the impossibility of persons

27 Art. 1 of Directive 2000/78/EC
28 Art. 2 par. 1 and art. 3 of G.O. no. 137/2000, republished

belonging to the Seventh Day Adventist cult of being present to the exam for admission to magistracy, organized on Saturdays. According to the doctrine of the said cult, the days of Saturday are dedicated exclusively to religious worship. The petitioner asked NCCD to take action to modify the days of organizing competitions in order to ensure the exercise of the religion right. Through **decision no. 307 of 05.10.2004**, the Committee ascertained that NCCD addressed to the Ministry of Justice, which will consider the issues presented by the petitioner within future negotiations for organization of competitions of admission to magistracy.

(2005) **Employment relationship. Disciplinary inquiry. Defamation. Religious freedom.** The non-governmental organization Center of Legal Resources and religious organization „Jehovah's Witnesses” complained about the treatment applied to Mr. D.V. pedagogue of the School of M. locality. The accusations against the petitioner expressed by the mayor were stated, i.e. that the pedagogues cannot carry out a religious propaganda in school and the pedagogical activity because of his religious affiliation. In the same regard, a complaint was filed at the School Inspectorate. The members of the inquiry commission made it clear to him that he must choose between the teacher activity and religion. The petitioner was warned that in case there will be complaints regarding his behaviour outside school, he will be eliminated from the education system. Through **decision no. 81 of 26.04.2005,** the Committee set down that the accusations expressed by the Mayor were a breach of the provisions of art. 19 of G.O, no. 137/2000 on the right to personal dignity. With regard to the members of the inquiry commission, was set down the breach of the right to private life, freedom of conscience and expression and with regard to the note communicated by the Inspectorate was set down the breach of art. 2 par. 3 of G.O. no. 137/2000. The contraventional sanctioning of warning was applied against the respondents. Also, was applied the sanctioning with contraventional **fine** amounting to 6.000.000 lei regarding the publishing of discriminatory articles, by which is generated a hostile and offensive environment against the religious minority and the Roma minority (art. 2 par. 1, par. 3, art. 5 and art. 19 of G.O. no. 137/2000, subsequently amended and supplemented).

(2005) **Ensuring religious assistance. Military priests. Protocol. Penitentiaries.** Association APADOR-CH complained about the discriminatory provisions of the law regarding the employment of the military clergy and of the protocol concluded between the Ministry of Justice and Orthodox Romanian Church regarding the provision of religious assistance in penitentiaries. Through **decision no. 202 of 02.08.2005**, the Committee set down that if religious assistance by the cults recognized by the law is regulated, this must be ensured under equality conditions to persons which are part of various cults or recognized religious organizations. The former European Commission of Human Rights in the case X.c. Great Britain settled that within the limits posed by the status of prisoner, the penitentiary authorities are obliged to ensure the necessary facilities for the exercise of religious obligations, including the right to enter into contact with a missionary of the practicing cult. As a consequence, a protocol concluded with a cult may cover at most the issues of religious assistance for the prisoners belonging to that cult and not the religious assistance of all confessions, since there is a discrimination in relation to those cults. The Committee found that the notified aspects constitute **direct discrimination** under art. 2 par. 1 and par. 3 and it decided to **issue a recommendation** to eliminate the discriminatory provisions in the given protocol and Law no. 195/2000 (art. 2 par. 1 and 3, art. 19 of G.O. no. 137/2000, subsequently amended and supplemented).

(2005) **Professional promotion competition. Magistracy. Organization. Consideration of elements of religious freedom.** Ms. judge V.M. enrolled in a promotion competition and afterwards she found that the exam was established on a day of Saturday. Given that she is a member of the Seventh Day Adventist Cult, she addressed a request to the Superior Council of Magistracy to re-schedule the written test for another day, because, according to her religion, Saturday is a day of rest and religious worship. The request was denied. Through **decision no. 350**

of 19.12.2005, the Committee set down that the freedom of religion includes a wide range of acts and according to ECHR case-law, the practices and rituals concern a religious behaviour exhibited through participation in offices or processions and the acts which are part of practicing a religion or a faith in a generally recognized form are protected by the European Convention. In this regard, respect for the Sabbath is part of the religious practice to which the petitioner belongs. The Committee ascertained that it cannot be retained as reasonable the impossibility of programming the exam on Sundays on grounds of distance run by the petitioners and their impossibility of appearing in court on Monday, the fact that through the individual participation of the petitioner the secrecy of work would not be ensured, etc. The Committee found that the notified deeds fall under art. 2 of G.O. no. 137/2000, being a **differentiated treatment** from the perspective of the non-discrimination principle. Also, it was **recommended** to SCM to take into account the principle of non-discrimination and of the freedom of thought, conscience and religion when organizing promotion exams. (art. 2 of G.O. no. 137/2000, subsequently amended and supplemented).

(2005) Employment relationships. Demotion. Convictions. Mr. I.P. complained about the fact that he was put in reserve following his participation to an unauthorized demonstration organized by the Movement for Spiritual Integration in Absolute. Outside the professional activity, the petitioner attended various yoga courses. Following his participation to a demonstration organized by MSIA, he was contraventionally sanctioned for public nuisance. The sanctioning minutes was cancelled by the court. However, the petitioner was sent before the Council of Justice and he was put in reserve because of his participation to the said demonstration. The Committee set down that although against the petitioner were stated legal provisions related to political, trade unions or religious activities, the MSIA association has no political, trade union or religious nature, does not contravene military order and discipline or public order, being charged to the petitioner the membership of the said association. Through **decision no. 365 of 18.11.2005**, the Committee set down that the petitioner's putting in reserve resulted in restricting the labour right recognized by the law, due to his affiliation to the MSIA association. In this case, the termination of labour relationships was due to the petitioner's convictions, regarding his affiliation. The Committee ascertained that the notified deeds are **direct discrimination** according to art 2 par. 1 and par. 3, art. 6 lett. a of G.O. no. 137/2000 subsequently amended and supplemented. The respondent was contraventionally sanctioned by **warning** (art. 2 par. 1 and par. 3, art. 6 lett. a of G.O. no. 137/2000, subsequently amended and supplemented).

(2006) Employment relationships. Termination of labour agreement. Political convictions. Mr. P.I. complained about the fact that the employer terminated his labour agreement because of his political convictions. In fact, the documents submitted proved that the petitioner was discharged on grounds of withdrawal of his political support by a political group. Through **decision no. 318 of 23.11.2006**, the Committee set down that the measure taken against the petitioner violated his right to labour, being directly related to elements regarding political convictions. The Committee found that the notified deeds are **direct discrimination** according to art. 2 par. 1 and 2, art. 6 lett. a of G.O. no. 137/2000. The respondent was sanctioned by contraventional **fine** amounting to 4000 RON (art. 2 par. 1 and par. 2, art. 6 lett. a of G.O. no. 137/2000, subsequently amended and supplemented.

(2007) Employment relationship. Working conditions. Differentiation. Religious affiliation. Mr. B.G. complained about the treatment he was subjected to by the employer, namely the successive transfers of working place, disciplinary measures , repeated request to perform the psychological testing, disciplinary inquiry because of his membership of the Baptist religious cult. Through **decision no. 172 of 07.02.2007**, the Committee set down that the notification is partly grounded, namely as regards the different treatment applied to the petitioner concerning his sanctioning about an incident at work. The Committee set down that

the differentiated treatment was related to the religious affiliation (**direct discrimination**), contrary to the provisions of art. 2 par. 1 and par. 4 of G.O. no. 137.2000, republished).

(2007) **Employment relationships. Salary entitlements. Political convictions.** Mr. S.V. complained about the fact that he was subjected to a discriminatory treatment because of his political convictions. Following the fact that the petitioner publicly criticized the gesture of the respondent of changing his political views and of transferring to another political party, his salary entitlements were affected in relation to those of other employees (a smaller amount of wage rewards, reduction of management compensation, failure to grant merit salary and pay overtime). Through **decision no. 400 of 07.11.2007**, the Committee set down that the petitioner's professional evaluations were maximum and in relation to his activity there was a differentiated situation between him and other employees in similar positions, with regard to salary entitlements. The Committee ascertained that the notified deeds are **indirect discrimination**, according to art. 1 par. 2, lett. i, art. 2 par. 2 and par. 3, art. 6 par. 1 lett. c and art. 15 of G.O. no. 137/2000. The respondent was sanctioned by contraventional **fine** amounting to 400 RON (art. 1 par. 2 lett. i, art. 2 and par. 3, art. 6 par. 1 lett. c and art. 15 of G.O. no. 137/2000, republished).

(2008) **Employment relationships. Disciplinary inquiry. Termination of labour agreement. Political convictions.** Mr. C.V.I. former member of a political party and supporter was appointed in a management position. He complained about the fact that the employer asked him to withdraw from the position he held on ground of implementing a political order. Other persons, who held similar positions and were part of the party which the petitioner joined were requested to do the same. The petitioner was subjected to disciplinary inquiries and ultimately his labour contract was terminated. The respondent stated that the disciplinary inquiries were based on irregularities found in the fulfillment of work prerogatives, which led to the termination. Through **decision no. 260 of 18.02.2008**, the Committee found that the treatment to which the petitioner was subjected (telephone calls, requesting resignation, checks, disciplinary inquiries, termination of contract) constitute harassment at work, justified by his political convictions. It was found that the notified deeds are **discrimination** according to art. 2 par. 1 and art. 2 par. 5 of G.O. no. 137/2000. The respondent was sanctioned by **warning** (art. 2 par. 1 and art. 2 par. 5 of G.O. no. 137/2000, republished).

(2008) **Employment relationships. Disciplinary inquiry. Termination of labour agreement. Political convictions.** Mr. D.D. complained about the fact that the employer objected that he is not in the right party and he was afterwards subjected to disciplinary inquiries, being charged with serious disciplinary offences and injuries to the company. Afterwards, he received by fax the decision of termination of the labour agreement. Through **decision no. 401 of 22.07.2008**, the Committee noted that the start of control and disciplinary procedure actions, although based on presumptive offences, was related to the fact that the petitioner was not a member of a certain political party. The Committee ascertained that the notified deeds are **direct discrimination** according to art. 2 par. 1 and par. 4 of G.O. no. 137/2000. The respondent was contraventionally sanctioned by **warning.** (art. 2 par. 1 and par. 4 of G.O. no. 137/2000, republished).

(2008) **Employment relationships. Disciplinary inquiry. Termination of labour agreement. Political convictions.** Mr. G.G. complained about the fact that the employer asked him to relinquish the position he held, on grounds of implementing a political order, namely the fact that he had no political support anymore (he was not anymore part of a certain party). The petitioner was subjected to a disciplinary inquiry and was sanctioned by warning and during the time when he had been in medical leave, another person, member of a political party was appointed in his place. Through **decision no. 546 of 06.10.2008**, the Committee set down that the employer decided to initiate certain control and disciplinary

procedure actions due to the fact that the petitioner was not member of the same political party, in view of terminating labour relationships. It was ascertained that the notified deeds are **direct discrimination** according to art. 2 par. 1 and par. 2 (instruction to discriminate) of G.O. no. 137/2000. The respondent was contraventionally sanctioned by **warning**. (art. 2 par. 1 and par. 2 of G.O. no. 137/2000, republished).

(2008) Employment relationships. Disciplinary inquiry. Termination of the labour agreement. Political convictions. Mr. B.D. complained about the fact that the employer asked him to relinquish the position he held, on grounds of implementing a political order. The petitioner was subjected to controls and checks, requesting his resignation, for political reasons. The respondent claimed that the petitioner committed serious offences against the rules regarding work discipline and ethical commitments. Through **decision no. 795 of 27.08.2008**, the Committee set down that the treatment to which was subjected the petitioner (phone calls, requesting resignation, checks, disciplinary inquiries) constitutes harassment at work, justified by the petitioner's political convictions. It was ascertained that the notified deeds are **discrimination** according to art. 2 par. 1, par. 2, par. 3 and art. 2 par. 5 of G.O. no. 137/2000. The respondent was contraventionally sanctioned by warning (art. 2 par. 1, par. 2, par. 3 and art. 2 par. 5 of G.O. no. 137/2000, republished).

(2009) Employment relationships. Hierarchical relationships. Conviction. Obligations. T.A.M. complained about the failure to grant the leave, recording the work day as absent and the request to fill certain additional activity reports, unlike other colleagues who were not treated similarly. The reason of this treatment was the fact that the petitioner disclosed employer's internal information to the press. The respondent submitted no evidence regarding the aspects stated, just indicating that the petitioner has a relationship of concubinage with another employee, that she is under investigation and convicted by courts. In the absence of objective justifications from the respondent, the Committee set down that the notified aspects created an intimidating and hostile environment to the petitioner. Through **decision no. 186 of 31.03.2009** was ascertained her harassment on grounds of convictions and was decided to contraventionally sanction the respondent by **fine** amounting to 600 lei (art. 2 par. 5 of G.O. no. 137/2000, republished).

(2009) Employment relationships. Professional assessment. Conviction. Refusal. A.V. complained about the refusal to provide him the professional assessment file because of his political options. The petitioner considers that she was treated differently compared to other employees, being, together with another colleague, the only one who did not receive the professional assessment file, given that they have a different political option than the other employees. The respondent did not submit evidence regarding the charged situation. The collective bargaining agreement applicable to the employer stipulated express obligations regarding assessment. In these circumstances, the Committee ascertained the existence of a differentiated treatment applied to the petitioner compared to other employees, with whom he was in a relation of comparability. Through **decision no. 356 of 25.06.2009** was ascertained that the notified deeds are **direct discrimination** and was decided to issue a **recommendation** to the respondent (art. 2 par. 1 of G.O. no. 137/2000, republished).

(2009) Employment requirements business administrator. Convictions. The Humanist Association complained about the publishing of an employment announcement for a position of guesthouse administrator, which includes among the requirements: „man with fear of God". Through **decision no. 418 of 18.08.2009**, the Committee considered that the phrase used could be regarded in conjunction with correctness and honesty and a requirement of integrity in relation to a position which involves management and administration of assets, which implies trust between the employee and employer is an objective requirement, as long

as it does not cause distinctions between persons in comparable situations. On the other hand, to the extent such a requirement would involve in fact the application by the employer of a selection process based on purely subjective assessment criteria, which could result in the elimination of candidates or their rejection because of religious or philosophical convictions, it would fall under the provisions of art. 2 par. 3 of G.O. no. 137/2000, republished (**indirect discrimination**). No such differentiations were set down in this case. During the settlement of the complaint, the employer modified the employment announcement.

(2010) **Employment relationships. Elected representatives. Allowances for meetings of specialized commissions. Political convictions.** Mr. B.S., local counselor complained about the fact that he was denied, together with other colleagues who are part of a certain political party the payment of allowances for the activity within the specialized commissions and of ordinary council sessions, unlike the representatives of other parties, to whom those allowances were paid. Through **decision no. 328 of 18.11.2010**, the Committee set down that, according to the law regarding the statute of local representatives, the local representatives are entitled to a session allowance, in an amount established by the law for the participation in the specialized commission. From the documents of the file, it resulted that from the 13 local counselors, the payment of allowances was made only for 7 of them. The petitioner and the colleagues who were part of the same party did not receive such allowance, thus it resulted a differentiated treatment which put at disadvantage the petitioner in relation to persons in similar situations, based on his political affiliation. The Committee found that the notified deeds are **direct discrimination** according to art. 2 par. 1 and art. 6 lett. c of G.O. no. 137/2000. Also, it was decided to issue a **recommendation** in order to prevent situations which challenge the equality principle with regard to the right of allowance of local representatives (art. 2 par. 1 and art. 6 lett. c of G.O. no. 137/2000, republished).

2. Discrimination in the field of labour on grounds of DISABILITY

(2004) **Competition of admission to the profession. Organization. Taking into account the disability status. Reasonable accommodation.** Mr. G.M. complained about the refusal of the National Union of Public Notaries and of the Ministry of Justice of setting up a separate commission of examination of knowledge for disabled persons with a view to holding the exam of admission in the notary profession. The petitioner is a disabled person and can work under protective conditions. He has difficulties of speech and movement. He is a lawyer, he fulfills the requirements for holding the exam of admission to the notary profession, but he cannot take the exam under similar conditions as the other candidates who do not have a similar disability. The Committee set down that affirmative measures can be adopted with regard to the petitioner's situation, concretely special measures which take into account the protection of disadvantaged persons (such as ethnic minorities). Through **decision no. 362 of 17.12.2004,** the Committee set down that the notified deeds are **direct discrimination**, according to art. 2 par. 1 and par. 3 and art. 19 of G.O. no. 137/2000, subsequently amended and supplemented. The Committee referred to the provisions of art. 15 of the revised European Social Charter and to the provisions of Law no. 102/1999 on the special protection and employment of disabled persons, particularly art. 44 which refers to the obligation of adapting the workplace. The petitioner's request was legitimate, given that the law promotes the protection of disabled persons. Against the respondent (N.U.P.N.) was decided to apply the contraventional sanction of **warning** (art. 2 par. 1 and par. 3 and art. 19 of G.O. no. 137/2000, subsequently amended and supplemented).

(2005) **Competition for admission to the profession. Setting up of special commission. Disability. Reasonable accommodation.** Mr. G.M. complained about the refusal of setting up a special commission for examining knowledge with a view to admitting the petitioner in the notary profession. The petitioner is a disabled person and he can work

under protective conditions. According to the Ministry of Justice, the petitioner's disability constituted an obstacle in the exercise of the public notary profession and the relevant legislation does not provide exceptions on taking the exam individually. Through **decision no. 276 of 25.10.2005**, the Committee set down that the notified deeds are direct discrimination, according to art. 2 par. 1 and par. 3, art. 6 and art. 19 of G.O. no. 137/2000, subsequently amended and supplemented. The Committee referred to the provisions of art. 15 of the revised European Social Charter and to the provisions of Law no. 102/1999 on the special protection and employment of disabled persons, particularly art. 44 which refers to the obligation of adapting the workplace. Therefore the petitioner's request was legitimate, given that the law promotes the protection of disabled persons. Against the respondent (N.U.P.N. and Ministry of Justice) was decided to apply the contraventional sanction of **warning.** Also, it was recommended that NUPN should establish a special commission to examine the specialized knowledge of the petitioner. (art. 2 par. 1 and par. 3 and art. 19 of G.O. no. 137/2000, subsequently amended and supplemented).

(2007) **Social insurance rights. Retirement. Disability. Age**. Mr. A.A., a disabled person retired for age limit complained about the refusal of issuing a new retirement decision by including the additional contributory period according to art. 78 par. 8 of Law no. 19/2000. The respondent rejected the petitioner's request, although courts settled that „blind insured who got retired pursuant to art. 47 par. 2 of Law no. 19/2000 fulfill the two cumulative requirements provided by art. 78 par. 8 of the law, namely the minimum contributory age to be able to benefit from the increase of the scoring for the additional contributory period" and "the circumstance that disabled persons benefit through the effect of the law from a reduction of the contributory period cannot result in their exclusion from the application of provisions of art. 78 par. 8 of the law". The respondent alleged that the petitioner did not fulfill the relevant legal requirements. Through **decision no. 218 of 01.08.2007**, the Committee ascertained that in this case, the criterion which underlay the treatment applied was the circumstance contained in the provisions of art. 47 par. 2, referred to art. 78 par. 8 of Law no. 19/2000, concretely the standard retirement age referred to the retirement age for disabled persons, namely blind person for which the legal provision stipulate the benefit of „allowance for age limit, irrespective of age, if they filled as blind persons at least a third of the full contributory period provided by the law". In terms of comparability, art. 78 par. 8 of the said law stipulated that shall benefit from an increase of allowance all those who, after meeting the retirement requirements for age limit further contribute for a certain period to the public system of pensions. Thus all those who qualify for retirement for age limit as provided by the law, in terms of retirement and benefits granted by art. 78 par. 8 are in a comparable situation, including the blind insured retired according to art. 47 par. 2 of the law. The High Court of Cassation and Justice through the judgment delivered maintained the Sentence of the Court of Appeal P. that the provision of art. 78 par. 8 generates an equality regime for pensioners receiving an allowance for age limit. Thus the Committee considered that through the effect of interpreting the legal provisions in question was generated an inherent different treatment, in the form of excluding the petitioner from the application of provisions of art. 78 par. 8 of Law no. 19/2000. The Committee decided to issue a recommendation to the Ministry of Labour to endeavour to adopt the technical norms for the application of the provisions of art. 78 par. 8 of Law no. 19/2000, according to the principle of equal treatment between persons (art. 1, art. 2 of G.O. no. 137/2000, republished).

(2007) **Competition for filling a teaching position. Rejection. Disability.** M.D. complained about the fact that he enrolled in the competition for filling a teaching position in the field of model plane flying, but he was rejected because of his disability. The petitioner is a person with an increased disability, a graduate of the National Academy for Physical Education and Sport, specialization Model Plane Flying. The responded showed that the refusal was due

to the fact that the petitioner's training did not match to the position in question, without justifying this allegation in concrete. Through **decision no. 256 of 17.09.2007**, the Committee set down that the presumption of different treatment based on the disability criterion was not overturned by the respondent. It was ascertained that the notified deeds are **direct discrimination** according to art. 2 par. 1 and par. 4 in conjunction with art. 7 of G.O. no. 137/2000. Against the respondent was decided to apply the sanctioning by contraventional **fine** amounting to 400 RON (art. 2 par. 1 and par. 4 in conjunction with art. 7 of G.O. no. 137/2000, republished).

(2007) **Workplace. Accessibility. Disability.** Ms. M.E.R., a main dental technician with a hearing impairment received in lease a space upstairs where she undertook her work in the technical-dental field. In the same building, downstairs was the office of another medical office. The petitioner complained about the fact that the employees of the office downstairs frequently closed the door at the entrance in the building so his office could not be reached by patients or medical staff, since she cannot hear the doorbell. Through **decision no. 357 of 05.11.2007**, the Committee set down that because of her disability the petitioner could not hear the doorbell, in order to facilitate the access of potential clients. Blocking the access to the building resulted in limiting the access of persons to the petitioner's office, affecting her professional activity. It was set down that the notified deeds are **discrimination** according to art. 2 par. 1 and par. 4, art. 10 lett. b and c of G.O. no. 137/2000. Against the respondents was decided to apply the contraventional sanction of **warning** (art. 2 par. 1 and par. 4, art. 10 lett. b and c of G.O. no. 137/2000, republished).

(2009) **Labour relationships. Reasonable accommodation at work, Disability.** L.L.R., a person with the first level of disability complained about existing conditions at the workplace and the manner in which he was treated, given his medical situation. The petitioner showed that health facilities at work did not allow him to conduct his activities under normal circumstances, namely the circumstances provided by the law regarding the protection of disabled persons. His disability was a reason of marginalization at work and he did not receive "anything to do". The Committee considered that the called situation calls into question the failure to provide reasonable accommodation at work under minimum conditions, as per the petitioner's disability. Through **decision no. 665 of 26.11.2009**, the Committee ascertained that the notified deeds are discrimination and it decided to sanction the respondent by **warning** (art. 2 par. 1 of G.O. no. 137/2000, republished).

(2009) **Labour relationships. Termination of labour agreement. Disability.** L.L.E. complained about the termination of her labour agreement because of the disability acquired during the course of work. Although the respondent considered that in this case he terminated the labor agreement lawfully, in fact he alleged that in his organisational chart there are no part-time positions (n.n. which the petitioner would have been able to fill) and on the other hand it does not have activities corresponding to the disability resulting from the decision regarding the work capacity. The Committee ascertained that the respondent did not justify the impossibility of providing part-time positions and it did not reject allegation that he had working units with part-time work places. In light of the provisions of Law no. 448/2006, which ensures the reasonable accommodation at work, through **decision no. 463 of 02/09.2009**, the Committee ascertained that the notified deeds are **direct discrimination** and it decided to sanction the respondent by **warning** (art. 2 par. 1 of G.O. no. 137/2000, republished).

(2009) **Labour relationships. Refusal of re-employment. Disability.** F.A.E. complained about the refusal of the respondent to re-employ him after the expiry of the labour agreement on determined period because he is a disabled person, although other

persons were hired by the respondent. The petitioner was eligible for the reduction of the retirement age according to the law regarding the protection of disabled persons, but he worked on a determined period since he did not have a complete contributory period and he did not reach yet the retirement age for retirement for age limit. The respondent alleged the lack of vacancies and the lack of a position adapted to a disabled person. The Committee noted however that the petitioner requested that he would be employed on the previously held position, which allows to presume that this was appropriate for the needs of the petitioner, given the long period of time in which he actually filled it. Through **decision no. 77 of 03.02.2009**, the Committee ascertained that although the reasons called are apparently neutral, they are not objectively justified thus in this case was set down an **indirect discrimination**, it was decided to sanction the respondent by **warning** and to issue a **recommendation**. (art. 2 par. 3 and art. 6 par. 1 of G.O. no. 137/2000, republished).

(2009) **Competition for position. Rejection of file with a view to employment. Disability.** M.G.C. complained about the rejection of his file for the participation in a competition for filling a position, on reason of medical non-compliance, although the family doctor issued a medical certificate with the note "clinically able". The petitioner submitted at the file the medical certificate and a disability certificate. The respondent alleged that the refusal is based on the lack of capacity to cope with the demands of the position, in this case the poor health status. The Committee noted that the review commission that rejected the file included no doctor and the competence to establish the suitability of a person to fill a position devolve upon the commission, but upon medical bodies. Through **decision no. 345 of 23.06.2009**, the Committee set down that because of the disability, without being established a direct and objective link with the petitioner medical non-compliance, he was limited in his right of participating in the competition for filling a position. Thus, the Committee ascertained the **direct discrimination** and it decided to apply sanctioning by **warning** and issuing a **recommendation** to the respondent (art. 2 par. 1, art. 7 par. 2 of G.O. no. 137/2000, republished).

(2010) **Competition for admission to profession. Reasonable accommodation. Disability.** Mr. A.R.C. complained about the fact that he enrolled in the exam for admission in the profession of insolvency practitioner and he requested, justified by medical grounds, an additional time of half to the normal examination time. The petitioner indicated that he suffers from certain medical conditions, impaired concentration, cognitive deterioration and poor concentration power with weak results in speed. The representatives of the respondent informed the petitioner that they cannot respond favourably to the request for reasons of missing regulation of such cases. Through **decision no. 126 of 07.07.2010**, the Committee set down that there was a limitation in the petitioner's regard (reduction by at least a half of the work capacity) which resulted from physical, mental or psychical deficiencies (classification in level III of disability) and which prevented his participation to the professional life for a long period of time. Although the given situation did not result from an act certifying a disability, stricto sensu, in addition to the national law no. 448/2006 on the protection and promotion of the rights of disabled persons, the Committee also referred to the interpretation given to the disability notion by the European Court of Justice and the concept of reasonable accommodation transposed in the national law. The Committee set down that the reasons of the respondent had an apparently neutral nature, but the fact led to the petitioner's disadvantage because of his medical situation, in the meaning of art. 2 par. 3 of G.O. no. 137/2000, republished. ... The failure to take into account the different situation of the petitioner led to an identical treatment of persons in different situations, which constitutes one of the forms of breaching the equality principle and in this case an **indirect discrimination** by not ensuring the reasonable accommodation in question. It was also decided to issue a **recommendation** so that in the organization of admission competitions all relevant differences regarding persons with disabilities be taken into account and to adopt appropriate measures to ensure equal opportunities in the process of access to profession (art. 2 par. 3 of G.O. no. 137/2000, republished).

3. Discrimination in the field of labour on grounds of AGE

(2003) Public employment offer. Conditions. Differences of treatment. Age. Ms. X, aged 35 complained about the fact that following a notice published in the newspaper „Romania Libera”, she contacted the employer B.A.D.O. with a view to filling the position of legal adviser or secretary. The representative of the respondent indicated that the she did not fall under the criteria for filling the position, since the maximum age is 28 years, although this requirement was not provided in the notice published in the newspaper. Through **decision no. 122 of 23.04.2003**, the Committee set down that the deeds presented constitute **discrimination** in the meaning of art. 2 par. 2 and art. 7 par. 2 of G.O. no. 137/2000. In the same sense, was called art. 1 of NCCD's Order published in the Official Gazette no. 235 of 7 April 2003, according to which employers are obliged to ensure free access to all the stages of the employment process without any distinction based on age. Also, it was decided to sanction the respondent by contraventional **fine** amounting to 5.000.000 lei (ROL) (art. 2 par. 2, art. 7 par. 2 of G.O. no. 137/2000).

(2003) Public employment offer. Conditions. Differences of treatment. Age. Gender. M.C. complained about the employment ad published by the commune Hall, in this case the requirements for enrollment in the competition (maid). Among the selection criteria, the respondent included the condition: female person, age between 30-35 years. Through **decision no. 113 of 07.05.2003,** the Committee ascertained that those criteria (age, gender) infringe the provisions of art. 2 par. 2, art. 5 and art. 5 par. 2 of G.O. no. 137/2000. Likewise, it was decided to sanction the respondent by contraventional **fine** amounting to 7.000.000 lei (ROL) (art. 2 par. 2, art. 5, art. 7 par. 2 of G.O. no. 137/2000).

(2003) Public employment offer. Conditions. Differences of treatment. Age. R.D. complained about the notice for filling a position published by the Chamber of Deputies, which included an age limit for candidates. Through **decision no. 173 of 03.06.2003**, the Committee set down that the notified aspects constitute **discrimination,** in the meaning of art. 7 par. 2 of G.O. no. 137/2000. Since from the date of deed perpetration (December 2001) over 6 months had elapsed, the term for the application of the sanction was lost by limitation. (art. 7 par. 2 of G.O. no. 137/2000).

(2003) Competition for filling a position. Conditions. Differences of treatment. Age. Gender. O.I., P.G. and B.V. complained about the organization of competitions for employing personnel within the Town Hall, mainly the conditions of age and sex. Within three competitions for filling the positions of guard, driver and clerk (fiscal agent), participation was made conditional upon age (maximum 35 years for the position of guard, maximum 45 years for the position of driver and maximum 35 years for the position of clerk) and sex (male) for all positions. Through **decision no. 178 of 03.06.2003,** the Committee set down that the notified deeds are **discrimination** in the meaning of art. 7 par. 1 and 2 of G.O. no. 137/2000. Since from the date of deed perpetration(14.06.2001, 9.07.2001, 4.10.2002) more than 6 month had elapsed, the term for the application of the sanction was lost by limitation (art. par. 1 and par. 2 of G.O. no. 137/2000).

(2003) Public employment offer. Conditions. Differences of treatment. Age. Self-notification (ex officio). NCCD was self-notified regarding the publishing within advertisement sections in the written press of employment notices containing selection criteria based on age, sex or affiliation with an ethnic group or a minority. The Committee was self-notified regarding the publishing of such notices in the newspapers “Romania Libera”, “National”, “Evenimentul Zilei”, Monitorul de Bucuresti”, „Adevarul”, „Ziarul”, ’Ziua. Through **decisions**

no. 188, 189, 190, 191, 192, 193 and 194 of 10.06.2003, the Committee set down that by imposing the conditions in question were perpetrated **discrimination** deeds against the provisions of art. 2 par. 2 and art. 7 par. 2 . It was also decided to contraventionally sanction by **warning** the respondents. (art. 2 par. 2 and art. 7 par. 2 of G.O. no. 137/2000).

(2003) **Public employment offer. Conditions. Differences of treatment. Age.** R.D. complained about the notice for filling a position published by the Chamber of Deputies, which included the requirement of an age limit for candidates. Through **decision no. 217 of 14.03.2003**, the Committee set down that by settling an age limit as a condition of participation in the competition organized for filling a position was caused a **discrimination** in the meaning of the provisions of art. 7 par. 2 of G.O. no. 137/2000. Also, it was decided to contraventionally sanction the respondent. by **warning** (art. 7 par. 2 of G.O. no. 137/2000).

(2004) **Public employment offer. Conditions. Differences of treatment. Age. Sex.** Mr. X complained about the fact that a specialized internet site published an employment notice for the position of programmer. Among the required conditions for selection was age between 20-45 years and the male gender. Through **decision no. 60 of 26.02.2004**, the Committee set down that the notified deeds are **discrimination**, according to art. 2 par. 3 and art. 7 par. 2 of G.O. no. 137/2000, subsequently amended and supplemented. Against the employer was decided to apply the contraventional sanction of **warning** (art. 2 par. 3 and art. 7 par. 2 of G.O. no. 137/2000 subsequently amended and supplemented).

(2004) **Admission to profession. Statute. Conditions. Differences of treatment. Age.** Ms. L.E.G. submitted her file for the participation in the exam of admission to the public notary profession. The petitioner's file was rejected because she exceeded the age of 35 years, pursuant to the provisions of art. 48 of the Statute of the National Union of Public Notaries. Article 48 provided that trainee notaries can be those persons who did not exceed 5 years after obtaining the bachelor's degree and at most 35 years. The respondent called the fact that these requirements are justified by the encouragement of young graduates in law and the legal provisions applicable to the profession of notary. Through **decision no. 122 of 20.01.2004**, the Committee ascertained that the notified deeds are **discrimination** according to art. 2 par. 1 and par. 2 and art. 7 par. 1 and par. 2 of G.O. no. 137/2000, subsequently amended and supplemented. The Committee set down that limiting the access of persons over 35 years to the competition generates a restraint of competitors by which is infringed the right to equal opportunities in the access to profession. The encouragement of participation of young graduates to the admission competition can constitute a legitimate purpose, but the methods of attaining that purpose (imposing an age limit) are not proper, since they restrict the free access to the exam of admission to the probation as notary. Against the respondent was decided to apply the contraventional sanction of **warning** (art. 2 par. 1 and par. 2 and art. 7 par. 1 and par. 2 of G.O. no. 137/2000, subsequently amended and supplemented.

(2004**) Public employment offer. Conditions. Differences of treatment. Age. Sex. Self-notification (ex officio).** NCCD was self-notified regarding the employment announcement of company G.V.M.S.R.L. published in newspaper „Ziua". The announcement concerned the position of secretary and among the selection requirements were: age (minimum 23 years – maximum 30 years), sex (female) and residence (Bucharest). Through **decision no. 158 of 25.05.2004**, the Committee set down that the issues in question constitute **direct discrimination ,** according to art. 2 par. 1 and par. 3, art. 7 par. 2 of G.O. no. 137/2000, subsequently amended and supplemented. Against the respondent was decided to apply the contraventional sanction of **warning** (art. 2 par. 1 and par. 3, art. 7 par. 2 of G.O. no. 137/2000, subsequently amended and supplemented).

(2004) Admission competition to training programs. Regulation. Conditions. Differences of treatment. Age. Ms. X complained about the regulation regarding the organization and conduct of the competition for admission to the specialized training programs in public administration. The regulation provided that are able to join the competition University graduates with a Bachelor's Degree, whose age cannot exceed 30 years. Through **decision no. 237 of 19.08.2004**, the Committee ascertained that the notified deeds are **direct discrimination** according to art. 2 par. 1 and par. 3 and art. 6 lett. d of G.O. no. 137/2000, subsequently amended and supplemented. Against the respondent was decided to apply the contraventional sanction of **warning.** Also, it was decided to issue a **recommendation** to the respondent to initiate proceedings to amend the regulation in order to eliminate the discriminatory provisions on grounds of age (art. 2 par. 1 and par. 3 and art. 6 lett. d of G.O. no. 137/2000, subsequently amended and supplemented.

(2004) Labour relationships. Promotion. Differentiated treatment. Age. Mr. C.F. complained about the refusal to certify promotion on the position of University teacher, on grounds of age. The petitioner enrolled in the competition for the position in question, his file was accepted by the examination commission and following the contest he was declared winner and the Senate of the Faculty confirmed the exam. The file of the petitioner was sent to the National Council For the Certification of Titles, Diplomas and Certificates which decided that the petitioner „cannot be promoted above the retirement age”, since he is 66 years of age. In relation to the provisions of art. 128 and 129 of the Law regarding the statute of the educational personnel it resulted that the maintenance in the position held was related to the position previous to retirement, without question of promotion after reaching the age of 65 years. Moreover, under the law, university teachers and lecturers holding a PhD can be maintained in the position held, upon request and with the consent of the faculty council, until they reach the age of 70 years. Through **decision no. 299 of 05.10.2004**, the Committee ascertained that the notified deeds are **direct discrimination** according to art. 2 par. 1 and par. 3 and art. 6 lett. d of G.O. no. 137/2000, subsequently amended and supplemented. It was also decided to issue a **recommendation** to N.C.C.T.D. with a view to eliminating discriminatory acts, on grounds of age (art. 2 par. 1 and par. 3, art. 6 lett. b of G.O. no. 137/2000, subsequently amended and supplemented).

(2005) Labour relationship. Termination of labour agreement. Age. Mr. M.V. complained against company BRD GSG regarding the termination of his labour agreement because of age. The management report indicated that the replacement of the guard (n.n. the petitioner) was necessary, since his age is „much above the age of the team of employees”. The respondent indicated that they did not want to terminate the contract, but to replace the employee as discontent was expressed as to how the petitioner fulfilled his duties. Through **decision no. 48 of 09.03.2005,** the Committee set down that from the documents of the file it resulted that age was the only element that determined the decision of ceasing labour relationships. In such conditions, was ascertained the perpetration of a **direct discrimination**, according to art. 1 point 1 par. 1, art. 2 par. 1 and par. 3, art. 6 lett. a of G.O. no. 137/2000, subsequently amended and supplemented, It was decided to sanction the respondent by contraventional **fine** amounting to 20.000.000 lei (art. 1 point 1 par. 1, art. 2 par. 1 and par. 3, art. 6 lett. a of G.O. no. 137/2000, subsequently amended and supplemented).

(2005) Public employment offer. Conditions. Differences of treatment. Age. Ethnic origin. Mr. X complained about the publishing by S.C. Adrasim S.R.L. on a specialized internet site of certain employment notices (tailors, garment workers, auto-mechanics). Among the selection requirements were included age between 30-40 years and the exclusion of Roma („Roma excluded”). Through **decision no. 97 of 17.05.2005**, the Committee set down that the notified deeds constitute **direct discrimination**, according to art. 2 par. 1 and par. 2, art.

7 par. 1 and par. 2 of G.O. no. 137/2000, subsequently amended and supplemented. Against the employer and the site administrator was decided to apply the sanction of contraventional **fine** amounting to 20.000.000 lei and 4.000.000 lei (art. 2 par. 1 and par. 3, art. 7 par. 1 and par. 2 of G.O. no. 137/2000, subsequently amended and supplemented).

(2005) **Public employment offer. Conditions. Differences of treatment. Age. Self-notification (ex officio).** NCCD was self-notified regarding the publishing in advertisement sections of the written press of employment notices containing selection criteria based on age and gender. The self-notification concerned the publishing of such notices in newspapers „Ziua", „7 Plus" and „Ziarul". Through **decisions no. 98,99 and 100 of 17.05.2005**, the Committee set down that by imposing the conditions in question were perpetrated **discrimination** deeds infringing the provisions of art. 2 par. 1 and par. 3 and art. 7 par. 2. Also, it was decided to contraventionally sanction the respondent by **warning** (art. 2 par. 1 and par. 3 and art. 7 par. 2 of G.O. no. 137/2000).

(2005) **Public employment offer. Conditions. Differences of treatment. Age. Self-notification (ex officio).** NCCD was self-notified regarding the publishing in the advertisement sections of written press of employment notices containing selection criteria based on age and gender. The self-notification concerned the publishing of such notices in newspapers „Atac", „Adevarul", „Jurnalul national", „Libertatea", „Evenimentul Zilei", „Bursa", „Romania Libera". Through **decisions no. 101, 102, 103, 104, 105, 106, 107 of 17.05.2005**, the Committee set down that by imposing the conditions in question were perpetrated **discrimination** deeds infringing the provisions of art. 2 par. 1 and par. 3 and art. 7 par. 2. Also, it was decided to sanction the respondents by **warning** (art. 2 par. 1 and par. 3 and art. 7 par. 2 of G.O. no. 137/2000).

(2005) **Public employment offer. Conditions. Differences of treatment. Age. Residence.** Mr. V.K. complained about the publishing on a specialized internet site of an employment notice for the position of art director. Among the selection requirements were included age of maximum 30 years and compulsory residence in Bucharest. Through **decision no. 205 of 11.07.2005**, the Committee set down that the notified deeds are **direct discrimination** according to art. 2 par. 1 and art. 7 pr. 2 of G.O. no. 137/2000, subsequently amended and supplemented (art. 2 par. 1, art. 7 par. 2 of G.O. no. 137/2000, subsequently amended and supplemented).

(2005) **Labour relationships. Promotion. Differentiated treatment. Age.** Mr. B.I. complained about the refusal of an endorsement of his file in order to be promoted in an educational position, due to age. In fact the competition file was rejected since it was considered that the petitioner exceeds the age of promotion to the position of University teacher. Although the university which employed him approved the continuation of his activity on a position of lecturer, there was no endorsement for another educational position. Through **decision no. 321 of 21.11.2005**, the Committee set down that although the refusal was based on the provisions of art. 61 and 129 of Law no. 128/1997 regarding the status of educational personnel, these did not lay down promotion restrictions during the course of a labour relationship. The Committee ascertained that the notified deeds are **direct discrimination** according to art. 2 par. 1 and art. 6 lett. d of G.O. no. 137/2000 and it decided to issue a **recommendation** (art. 2 par. 1 and art. 6 lett. d of G.O. no. 137/2000, subsequently amended and supplemented).

(2005) **Labour relationships. Promotion. Differentiated treatment. Age.** Mr. D.I. complained about the refusal of endorsing his file for promotion in the educational position (lecturer) due to age. In fact, the competition file was endorsed by the University which employed him, but was rejected by the Ministry of Education, since at the date of enrollment in the competition he fulfilled the conditions of retirement for age limit. The Committee set

down that the denial was in fact an exclusion on age grounds, unjustified given that at the date of the competition the petitioner had 63 years and the standard retirement age was 65 years. Through decision no. 326 of 28.11.2005 the Committee ascertained that the notified deeds are **direct discrimination** according to art. 2 par. 1, art. 6 lett. d of G.O. no. 137/2000, Also, it **recommended** that the respondent should grant the endorsement (art. 2 par. 1, art. 6 lett. d of G.O. no. 137/2000, subsequently amended and supplemented).

(2005) **Selection competition training programs. Regulation. Conditions. Differences of treatment. Age. Self-notification (ex officio).** NCCD was self-notified regarding the regulation on the selection for programs of specialized training for managers, on age grounds (maximum 35 years). Through **decision no. 355 of 18.11.2005**, the Committee set down that through the regulations applicable to civil servants no requirement of age was imposed. Basically, by imposing the requirement of maximum age the civil servants over 35 years are excluded from getting to the manager profession. The Committee ascertained that the notified deeds are **direct discrimination** according to art. 2 par. 1 and par. 2, art. 6 lett. d of G.O. no. 137/2000, subsequently amended and supplemented. Also, it was decided to issue a **recommendation** to the respondent to eliminate the maximum age requirement for specialized training programs for the position of public manager (art. 2 par. 1 and par. 2, art. 6 lett d of G.O. no. 137/2000, subsequently amended and supplemented).

(2006) **Labour relationship. Suppression of position. Reorganization. Age.** Mr. T.M. complained about the suppression of the position, invoking the fact that the reorganization of the activity by the employer had the aims of discharging him, on age grounds (58 years), although he had a length of service of 12 years with that employer. He indicates that in the company the personnel has a length of service between 2 months and 2 years, with an age of up to 25 years. Through **decision no. 13 of 10.01.2006,** the Committee set down that the petitioner was in a comparability situation with the other employees and the respondent invoked apparently neutral criteria, namely the observance of legal provisions regarding the establishment of a working unit in case the number of 4 employees was surpassed. Thus the restructuring was carried out given that the employees had full time positions, except for the petitioner who had a part-time position. The working unit in question employed a person aged 24 years, thus the number of employees surpassed 4 and it was necessary to fiscally register the working unit. After approximately one month the employer considered that he should perform the reorganization and it suppressed the position of the petitioner. In such conditions, the Committee considered that it cannot be set down that were used proper and necessary means for attaining a legitimate aim as the petitioner was put at disadvantage in relation to the other employees. It was set down that the notified deeds are **direct discrimination** according to art. 2 par. 2 and art. 6 lett. a of G.O. no. 137/2000, subsequently amended and supplemented. Against the respondent was decided to apply the contraventional sanction of **warning** (art. 2 par. 2 and art. 6 lett. a of G.O. no. 137/2000, subsequently amended and supplemented).

(2006) **Filling a vacant position in the penitentiary system. Age conditions.** Mr. I.N. complained about the age condition imposed for filling a position of agent. The petitioner, a graduate of the military school, penitentiaries profile was active as a non-commissioned officer, but he was put on reserve status following the decision of the commission of medical-military expertise. After several re-examinations, he was declared able and consequently he requested to be enrolled in a competition for a vacant position. Since he did not fulfill the age requirement, he was requested to demand for age exemption. The request was rejected. It was invoked that in establishing the age limit, the requirement of taking sport tests was taken into account and the law on military pensions establishes a length of service of at least 15 years. Through **decision no. 125 of 11.06.2006**, the Committee set down that in relation to the grounds invoked, it cannot

be set down that the means uses (maximum age) in attaining the aim stated (pension of work) were appropriate and necessary. In this regard, it was set down that participants admitted to the competition were signing a statement by which they were acknowledging that they would not benefit from pension of work if they do not comply with the length of service requirements upon reaching the pensioning age. In such conditions, it cannot be set down that the imposition of the age limit was justified. The Committee ascertained that the notified deeds are **discrimination** according to art. 2 par. 1 and par. 2 of G.O. no. 137/2000 and it **recommended** that the respondent should take the required measures to eliminate the restrictive age requirements (art. 2 par. 1 and par. 2 of G.O. no. 137/2000, subsequently amended and supplemented).

(2006) **Admission competition at the Police Academy. Conditions. Age. Self-notification (ex officio).** The complaint of Ms. M.I. was joined with NCCD's self-notification on establishing the maximum age of 25 years reached in the year of participation in the admission contest. In relation to this requirement it was shown that the applicable laws regulate the right to a career in the system, ensure the fulfillment of pensioning conditions and the development of the career, minimum required probation periods, length of service of minimum 30 years. Through **decision no. 167 of 07.07.2006,** the Committee set down that the imposition of the maximum age of 25 years constitutes a restriction of the right to education. The candidate may choose to sit admission exams in education at any age, taking upon himself the possibility or the risk of not being retired from a system, in this case of not benefitting from pension of work. The Committee ascertained that the notified deeds are **direct discrimination**, according to art. 2 par. 1 and par. 2 of G.O. no. 137/2000 and it **recommended** the elimination of the maximum age condition for the admission competition (art. 2 par. 1 and par. 2 of G.O. no. 137/2000, subsequently amended and supplemented).

(2006) **Regulations governing the retirement system. Profession. Doctors. Age.** The National Agency for Equal Opportunities between Women and Men, the Commission for Equal Opportunities between women and men of the Senate and dr. D.M., dr. I.G., dr. V.O., dr. D.A. and dr. L.P. complained about the retirement requirements set in relation to the profession of doctor, in this case establishing of a differentiated age for women and men (Law no. 96/2006). The old regulation provided a retirement age of 65 years, irrespective of sex, going forward up to 70 years. The new regulation provides a retirement age under the public system of pensions, i.e. 60 years for women and 65 years for men. Through **decision no. 209 of 27.06.2006**, the Committee set down that the differentiation in the new regulation can be compared to an affirmative measure, but, in fact, for the same labour, employment, length of service, etc. women meet the retirement requirements at a different age than that of men. Or, in order for the measure in question to be considered affirmative, there should be a way for women to opt upon reaching the age of 60 years and not an obligation. Moreover, doctors are a special professional category as regards the duration of finalizing studies and effective start of practicing, unlike other professional categories, thus establishing retirement requirements depending on different ages infringes the principle of non-discrimination, according to art. 2 par. 1 and art. 6 of G.O. no. 137/2000. The Committee **recommended** that the Ministry of Health should endeavour to eliminate the provisions in question (art. 2 par. 1 and art. 6 of G.O. no. 137/2000, subsequently amended and supplemented).

(2006) **Public employment offer. Conditions. Differences of treatment. Age. Self-notification (ex officio).** NCCD was self-notified regarding the publishing in a specialized newspaper of an employment notice of S.C. C. S.R.L.. Thus, for untrained finish employee the age between 18-35 years was required. Through **decision no. 320 of 23.11.2006**, the Committee set down that the imposition of the age limit cannot be considered as justified by a legitimate aim and the means used were not proper and necessary, since the imposed criterion does not reflect on the character of labour required. The Committee found that

the notified deeds are **direct discrimination** according to art. 2 par. 1 and art. 7 par. 2 of G.O. no. 137/2000, subsequently amended and supplemented, Against the employer and the specialized newspaper was decided to apply the contraventional sanction of **warning** (art. 2 par. 1 art. 7 par. 2 of G.O. no. 137/2000, subsequently amended and supplemented).

(2007) **Public employment notice. Conditions. Age. Sex. Self-notification (ex-officio).** NCCD was self-notified regarding the publishing in the specialized press of an employment notice for filling the position of administrator within an association. The participation requirements included: male, age over 35 years. Through **decision no. 23 of 25.01.2007**, the Committee ascertained that as regards the conditions of age and sex no objective justifications were invoked that could impose such criteria. Also, it was set down that through the imposition of these conditions and their publishing, the access of persons in filling the position in question was limited. Was set down the perpetration of a **direct discrimination** deed according to art. 2 par. 1 and par. 4 and art. 7 par. 2 of G.O. no. 137/2000. Against the respondent was decided to apply the contraventional sanction of **warning** (art. 2 par. 1 and par. 4 art. 7 par. 2 of G.O. no. 137/2000, subsequently amended and supplemented).

(2007) **Labour relationship. Admission to profession. Magistrates. Restrictions. Age.** Ms. P.N. complained about the fact that she filed a request of appointment as judge, having a 20 years length of service in the Bar and the age of 52 years. She passed the psychological testing, medical tests and the interview at the Superior Council of Magistracy. Subsequent to these tests, the admission request was rejected, invoking that the petitioner would be able to exercise the profession of judge for a limited period, in conjunction with the provisions of the law on the public system of pensions and conditions provided by Law 303/2004. Through **decision no. 62 of 13.03.2007**, the Committee set down that the provisions of the law on retirement and the time limit in which the judge position can be exercised are not an objective justification of the treatment applied to the petitioner. Or, although the petitioner fulfilled the requirements for appointment in the position of judge, her request was rejected on grounds of age, being considered that there is a limited period for exercising the profession. The Committee ascertained that the notified deeds are **direct discrimination** according to art. 2 par. 1, art. 6 lett. a of G.O. no. 137/2000. Also it **recommended** that the respondent should modify the decisions in order to eliminate the discriminatory treatment applied to the petitioner (art. 2 par. 1, art. 6 lett. a of G.O. no. 137/2000, republished).

(2007) **Labour relationship. Pressure. Retirement conditions. Age.** Mr. B.I., aged 54, with a length of service of 31 years complained about the manner in which employer made pressure and issued documents, in direct connection with age. He shows that in the course of a long period of time, the employer made pressure on the employees who reached the age for classification in the Ist labour group, with a view to requesting anticipatory retirement pursuant to the law on the public system of pensions. Because he did not request the benefit provided by the law and did not submit his request of anticipatory retirement, the petitioner was threatened, put under disciplinary investigation and his labour contract was modified on age grounds. Through **decision no. 158 of 31.05.2007**, the Committee set down that through his acts the employer explicitly referred to age and related conditionalities, under the specification that the employer is able to change the work place, wage or the labour contract. Taking into account the measures taken against the petitioner, the disciplinary sanctions, the modification of the contract or positions held, the Committee ascertained that the notified deeds are **direct discrimination and harassment** on grounds of age according to art. 2 par. 1 and art. 2 par. 5 in conjunction with art. 6 lett. a, lett. b and lett. e of G.O. no. 137/2000. Against the respondent was decided to apply the contraventional sanction of **warning** (art. 2 par. 1 and art. 2 par. 5 in conjunction with art. 6 lett. a, lett. b and lett. e of G.O. no. 137/2000, republished).

(2007) Public employment offer. Conditions. Differences of treatment. Age. Sex. Mr. P.G. complained about the publishing on an specialized internet site of an employment notice. Some of the required conditions for selection were age between 35-45 years and the male gender. Through **decision no. 368 of 13.03.2007**, the Committee set down that the imposition of the age and sex criteria led to the implicit exclusion of persons who had not fulfilled those criteria. The imposition of certain employment conditions related to the sex and/or age of potential employees which are not objectively justified by a legitimate aim according to relevant legal provision constitutes discrimination. It was ascertained that the notified deeds are **direct discrimination** according to art. 2 par. 1, art. 5 and art. 6 lett. a of G.O. no. 137/2000. Against the employer was decided to apply the contraventional sanctioning of **warning** (art. 2 par. 1, art. 5 and art. 6 lett. a of G.O. no. 137/2000, republished).

(2007) Rules of appointment in the Economic and Social Council. Criteria. Age. Miert Association complained about the manner of appointing experts who should represent non-governmental organisations in the Economic and Social Council and particularly with regard to the conditions that the candidate should have reached the age of 30 years. Through **decision no. 490 of 27.11.2007,** the Committee set down that the capacity of ESC member can be acquired by those who fulfill the conditions set by Law no. 109/1997 (they have only Romanian citizenship and residence in Romania, have reached the age of 30, have full legal competence and no criminal record). Through the provisions in question, was included the minimum age requirement and their effect calls into question a differentiation in relation to persons under 30 and those who reached the age of 30. The Committee ascertained that the deeds result in a differentiated treatment based on age and constitute **discrimination** according to art. 2 par. 1 of G.O. no. 137/2000. Also, it was decided to issue a **recommendation** to the Ministry of Labour that it should endeavour to eliminate the conditionality in question (art. 2 par. 1 of G.O. no. 137/2000, republished).

(2008) Public employment notice. Conditions. Age. Sex. The National Agency for Employment complained about the notices of mediation for placement of labour force abroad. The selection criteria included the age between 25-50 years for men and between 30-54 years for women. The respondent indicated that abroad companies requiring personnel impose criteria depending on the type of labour, but in some cases were employed persons who did not fulfill age requirements. Through **decision no. 138 of 11.02.2008**, the Committee set down that the differentiation generated by the notices of labour force mediation based on age limits must be analyzed against a certain objective justification that pursues a legitimate aim. The argument that foreign employers impose age requirements and contracting persons who do not fulfill requirements could lead to losing the contract with the applicant company cannot be considered an objective and reasonable justification, since the condition of observing the non-discrimination principle is incumbent upon any natural or legal person, as it is one of the general principles of Community law. Besides, the respondent did not submit any evidence allowing to retain that the specific occupational requirements of those vacancies would have justified the imposition of age requirements in relation to the economic activities or the position advertised by the employer. The Committee ascertained that the notified deeds are **direct discrimination** according to art. 2 par. 1, art. 5, art. 7 par. 1 of G.O. no. 137/2000. Against the respondent was decided to apply the contraventional sanction of **warning** (art. 2 par. 1, art. 5, art. 7 par. 1 of G.O. no. 137/2000, republished).

(2008) Filling the position of director and deputy director in pre-university institutions. Conditions. Age. Mr. M.D. complained about the fact that the norms of the Ministry of Education on filling positions of director in the state pre-university institutions made participation in the competition conditional upon age, i.e. at the date of sitting the

exam the candidate's age should be at least 4 years smaller than the maximum retirement age according to labour carried out and age limit and subsequently smaller than the standard retirement age. The Ministry indicated that these conditions took into account the exercise of the mandate during the period of 4 years, having the possibility to conduct and finalize projects during the mandate and not disturbing the activities of educational units. Through **decision no. 153 of 18.02.2008**, the Committee set down that the imposition of an age condition, initially an age 4 years smaller than the maximum retirement age and subsequently of the standard retirement age generates a differentiated treatment which is not objectively justified in order to attain a legitimate aim, through proper and necessary means. Also, it was set down that the law on the statute of educational personnel does not set out binding requirements of age and the educational personnel, under certain conditions, can be maintained in the system over the retirement age. The Committee ascertained the existence of a **different treatment** based on age and it decided to issue a **recommendation** to ensure the application of the principle of equal opportunities through the criteria of participation in the competition in question (art. 2 par. 1, art. 2 par. 3 of G.O. no. 137/2000, republished).

(2008) Access to a position in education. Inspector. Conditionality. Age. Ms. P.M. complained about the manner of conduct of the competition for filling the position of inspector, among others with regard to the condition laid down in relevant regulations which imposed on candidates to have an age of at least 4 years less than the standard retirement age at the date of the competition. The respondent invoked that the petitioner did not meet the requirements related to that position. Through **decision no. 238 of 27.02.2008**, the Committee set down that depending on the position published the respondent imposed additional criteria provided in the organisational norms for filling other positions. Also, it was set down that another candidate who had less than 4 years until the date of retirement, similar to the petitioner, was admitted. Although they were in comparable situations, the two candidates were treated in a differentiated manner, by invoking a requirement which was not relevant for the position they competed for. In the absence of objective and reasonable justifications for the treatment applied, the Committee set down that the notified aspects constitute **discrimination** according to art. 2 par. 1 and 2, art. 6 of G.O. no. 137/2000. Against the respondent was decided to apply the contraventional sanction of **warning** and of issuing a **recommendation** in view of ensuring an equal treatment between persons in comparable situations (art. 2 par. 1 and 2, art. 6 of G.O. no. 137/2000, republished).

(2008) Public notice. Application for a position of local counselor. Conditionality. Age. The Popular Social Christian Union complained about the organisation by a political party of a selection competition for the position of counselor, particularly the imposition of an age requirement (maximum 45 years). The respondent showed that this criterion is justified by the avoidance of applications submitted by persons who exercised positions in the secret services of the communist . According to the party's statute, persons who exercised such positions cannot become members. Through decision no. **386 of 08.07.2008**, the Committee set down that the public notice of participation for appointments in the position of local counselor involved a distinction based on age, result in discouraging persons over 45 years from applying. The aim invoked, avoiding persons who served a totalitarian regime by limiting the rights of other people is a legitimate one. But the imposition of the maximum age requirement is not a proper measure for attaining the aim pursued, taking into account that not all persons aged over 45 were part of the invoked category. The Committee ascertained that the deeds presented constitute **direct discrimination** according to art. 2 par. 1 and par. 4 and art. 15 of G.O. no. 137/2000. Also, it was decided to issue a **recommendation** that in the future adequate measures to the pursued aim should be adopted, as regards requirements to be met by certain candidates (art. 2 par. 1 and par. 4 and art. 15 of G.O. no. 137/2000, republished).

(2008) Labour relationships. Termination of the labour agreement. Age. Ms. A.C., a specialist doctor, with a PhD in medicine and a former fighter of the anticommunist resistance complained about the termination of the labour agreement, on age grounds, although the relevant legal provisions would have allowed him to continue the activity until reaching the age of 70. The petitioner showed that in the case of four colleagues who did not meet the legal requirements the continuation of activity was allowed, but in her case retirement was disposed. The respondent invoked that in the petitioner's case the labour agreement was terminated under the law, so no discrimination occurred. Through decision no. **429 of 22.07.2008**, the Committee ascertained that no objective and reasonable justifications can be set down in relation to the differentiation regarding the petitioner According to the Committee, the continuation of the medical activity in the cases corresponding to the legal provisions applicable to the petitioner (PhD in medicine, fighter in the anticommunist resistance) was not conditional upon a possible agreement of the employer, thus the apparently neutral situation put the petitioner at disadvantage in relation to the persons whose labour agreement was extended. Moreover, the petitioner's situation correlated to the premise stipulated in art. 385 par. 3 of Law no. 95/2006 was differentiated both in relation to the special norms of law no. 95/2006 and the doctors whose extension of labour agreements was approved, lastly because of age. The Committee ascertained that the notified deeds constitute **indirect discrimination** according to art. 2 par. 3 and art. 6 lett. a of G.O. no. 137/2000. Against the respondent was decided to apply the contraventional sanction of **warning** (art. 2 par. 3 and art. 6 lett. a of G.O. no. 137/2000, republished).

(2010) Public employment offer. Conditions. Differences of treatment. Age. Mr. S.M. complained about the publishing of an employment notice by S.C. R S.A. posted on a specialized internet site (employment notices). In fact, the selection criteria specified a maximum age of 40 years. The petitioner transmitted through email his intent of filling a position corresponding to his training, but he did not receive a response. He considers that the age limit was the reason for not solving his request. The respondent showed that as regards the notice, the specification of the condition is the result of an error and it presented data showing that previously and subsequently to the notice in question it hired persons over 40 years. Through **decision no. 337 of 18.11.2010,** the Committee set down that by publishing the notice which stipulated the age limit requirements the effect was to discourage persons who did not fall under those limits from showing their actual interest in the position. In this case it was not showed that the limitation was a proper and necessary measure in relation to a possible legitimate aim pursued in close connection with the position in question. The Committee set down that by publishing that notice a **differentiation based on age** was generated, infringing the provisions of art. 2 par. 1 of G.O. no. 137/2000. Also, a **recommendation** was issued for the respondent so that in the future it should adopt proper measures in its employment policy (art. 2 par. 1 of G.O. no. 137/2000, republished).

4. Discrimination in the field of labour on SEXUAL ORIENTATION grounds

(2007) Labour relationships. Pressure. Change of work place. Sexual orientation. Accept Association complained on behalf of B.R. regarding the fact that at his work place were disclosed information regarding his sexual orientation and his resignation was required. Procedures of disciplinary inquiry were started against the petitioner and he was sanctioned by warning. Subsequent to the investigations carried out by NCCD, the employer moved the petitioner to another work place on disciplinary reasons. Through **decision no. 29 of 07.02.2007,** the Committee set down that the disclosure by employees of certain information regarding the sexual orientation

of the petitioner is discrimination, resulting in an intimidating environment. Proceeding with the disciplinary inquiry and transfer subsequent to the petitioner's complaint regarding his discrimination constituted an adverse treatment as a result of the petitioner's notifications. The Committee ascertained that the notified deeds are **direct discrimination**, **harassment and victimisation** according to art. 2 par. 1, par. 5 and par. 7, art. 15 of G.O. no. 137/2000, republished. Against the respondents was decided to apply sanctioning by contraventional **fine** amounting to 1.000 RON, 400 RON and warning (art. 2 par. 1, par. 5 and par. 7, art. 15 of G.O. no. 137/2000, republished).

II. Case-law ascertaining discrimination beyond Directive 2000/78/EC in the context of national law

Directive 2000/78/EC has the aim of establishing a general framework of combating discrimination on grounds of religious affiliation or convictions, disability, age or sexual orientation with regard to employment and occupation, in order to implement the principle of equal treatment in member states[29]. The **national law** on non-discrimination concerns: employment conditions, criteria and requirements of recruitment, selection and promotion, access to all forms and levels of guidance, training and advanced training; **social security and protection; public services or other services, access to goods and facilities; the educational system; ensuring the freedom of movement; ensuring public order; other fields of social life**[30] and prohibits discrimination on grounds of religion, convictions, sexual orientation, age, disability[31].

1. Discrimination in the access to goods, services, facilities, personal dignity on grounds of RELIGION or CONVICTIONS

(2005) **Access to places opened for the public. Swimming pool. Correlation with religion. Self-notification (ex officio).** NCCD was self-notified regarding the refusal to allow access to a swimming pool to a person of Muslim religion, event which was reported in written press. Through **decision no. 221 of 21.09.2005,** the Committee set down that the Muslim person was wearing a bathing suit typical for his religion, made from a material identical to any other suit, but he was requested to leave the pool and its premises, requiring the intervention of police. As regards the services offered, it was set down that they were not provided under equality conditions and the actions disposed did not have an objective justification for attaining a legitimate aim. In this case was ascertained the perpetration of a **direct discrimination** according to art. 2 par. 1 and par. 3, art. 10 lett. f and art. 19 of G.O. no. 137/2000. Against the respondent was decided to apply the contraventional sanction of **fine** amounting to 1000 RON (art. 2 par. 1 and par. 3, art. 10 lett. f and art. 19 of G.O. no. 137/2000, subsequently amended and supplemented).

(2005) **Association. Freedom of religion. Manifestation of religion. Self-notification (ex officio).** NCCD was self-notified regarding the allegations of a group of persons by which were accused government authorities and representatives of local authorities of exercising pressure, persecution, threats because of the transition from the Orthodox cult to the Greek-Catholic one. The same reasons grounded the refusal of authorities of providing support to the Greek-Catholic community for ensuring cemetery and worship places. Through **decision no. 228 of 31.08.2005,** the Committee set down that the local authorities, i.e. the Local

29 Art. 1 of Directive 2000/78/EC
30 Art. 3 of G.O. no. 137/2000, republished
31 See art. 2 par. 1 of G.O. no. 137/2000, republished

Council had adopted a decision by which it forbade the activity of believers of the Roman Church United with Rome (Greek-Catholic) in the church and cemetery of the commune, since they were belonging to the Orthodox church. Similarly, the Commission for local public administration and defence of public order issued a report by which it decided to suppress the right of the priest to serve in the church. The Committee set down that through the acts adopted were perpetrated **discrimination** deeds, by which were infringed the right to the freedom of conscience and religious beliefs, access to public places, contrary to art. 2 par. 3, art. 18 and art. 19 of G.O. no. 137/2000, subsequently amended and supplemented. Against the Council was decided to apply the **contraventional sanction of warning** (art. 2 par. 3, art. 18, art. 19 of G.O. no. 137/2000, subsequently amended and supplemented).

(2006) Education. Study classes. Religious symbols. Freedom of conscience and religion. Mr. E.M. complained about the display of religious symbols in public educational units, considering that they prejudice the right to education in the process of shaping the autonomous and creative human personality and the rights of agnostic persons or of a different religion than that to which those symbols belonged. Through **decision no. 323 of 21.11.2006**, the Committee set down that in Romania there is a reciprocal recognition of autonomy between the state and the cults. Under the constitutional provisions and ECHR case-law, the state must be neutral and impartial in its relationship with various religions, cults and beliefs. Through the establishment of public educational units the state ensures the exercise of the right to education and neutrality requires the state to shape education in a way of transmitting in an objective, critical and pluralist manner to pupil the information regarding science and religion. Public institutions must take into account the convictions and options of parents or tutors of children. In Romania the exercise of the parents' right to opt for religious education for their children is ensured. The unlimited and uncontrolled presence in public educational units of religious symbols, in the absence of a relevant regulation and neutrality, may result in discrimination. The Committee **recommended** that the Ministry of Education should develop within a reasonable timeframe, internal norms to regulate the presence of religious symbols in public educational units.

(2007) Access to public administrative services. Differentiation. Religious cult. The Association Liga Pro Europa complained about the manner in which public local authorities allocated plots of land for religious cults, in relation to the situation of Greek-Catholic parishes from 2 localities in Mures county. Through **decision no. 65 of 27.03.2007,** the Committee classified the complaint under the exercise of the right to association and religious freedom of the cults recognized by the law. It was ascertained that as regards the re-establishment of the property right for the location of cults, the Greek-Catholic community was put at disadvantage in relation to the Orthodox community, although they were in comparable situations. The Committee set down that the notified deeds constitute **discrimination** according to art. 2 par. 1 and par. 2 of G.O. no. 137/2000. For one of the respondents was decided to apply the contraventional sanction of **warning** (art. 2 par. 1 and par. 2, art. 10 lett. h of G.O. no. 137/2000, republished).

(2007) Access to public administrative services. Differentiation. Religious cult. The Association Solidarity for the Freedom of Conscience complained about the manner in which the local public authority (town hall, local council) approved and allotted funds from the public budget to religious cults. Through **decision no. 140 of 21.06.2007**, the Committee set down that the allocation of fund was done only for the Orthodox Church, omitting the other religious cults. Although it was invoked that allocations were done based on requests, requests from other cults were not taken into consideration. In fact, it was not possible to set down any criterion why the respondent opted for only one party, by excluding the others, considering their comparability situation. The Committee ascertained that the notified deeds constitute **discrimination** according to art. 2 par. 1 and par. 3 of G.O. no. 137/2000. Also it

recommended that the respondent should ensure the application of an equal treatment of religious communities (art. 2 par. 1 and par. 3 of G.O. no. 137/2000, republished).

(2007) Education. School manuals. Content. Religious affiliation. The Natural Spiritual Assembly of Baha'i from Romania complained about the content of the manual entitled „Religion – the Orthodox cult”, intended for the XIth class, in particular with regard to the group description. Among other things, the organisation is associated with sects who make proselytism, with esoteric elements of Asian origin, tools of Satan or gates to hell, it represents a danger for the society, adopts means which are unfaithful to the Gospel, with a mission which offends family and the church community, methods of indoctrination, blackmail, exploitation of poverty, fanaticism. Through **decision no. 279 of 02.10.2007,** the Committee set down that the presentation of the organization offended its community, generating a hostile environment. The Committee acknowledged that the manual's authors requested the modification of the content for the section subject to analysis and the Publishing House ordered the modification of the content. The National Center for Curriculum and Assessment of Education mentioned that it decided to withdraw the manual from the market and from use in education and to revise and reprint it. The Committee ascertained that the notified deeds are **discrimination** according to art. 2 par. 1 and art. 15 of G.O. no. 137/2000, republished.

(2009) Discriminatory statements. Personal dignity. Conviction. P.H. complained about the statements made by A.F. concerning his religious beliefs. The petitioner showed that within a televised intervention, through his statements, the respondent correlated the members of a religious cult recognized in Romania and persons who perpetrate crimes, considering that „we cannot allow ourselves to be led by Pentecostals, thieves and criminals”. The petitioner showed that N.A.C. had sanctioned the television station with fine. The Committee considered that the statements of the respondent had a discriminatory effect, offending personal dignity. Through **decision no. 673 of 26.11.2009,** the Committee ascertained that the notified deeds are discrimination and it decided to sanction the respondent by **warning** (art. 2 par. 5 of G.O. no. 137/2000, republished).

(2009) Exercise of the elected representative mandate. Convictions. C.N. and others complained that following participation in elections and obtaining the mandate through the evidence issued by the District Election Office within the session of the Local Council, because of their different political orientation and ethnical affiliation, their mandates were rejected through the vote of local counselors belonging to the majority. The Committee set down that the invalidation of the mandates of the 5 petitioners in an analogous situation with the other 10 counselors constitutes a differentiation which was based on their different political orientation. It also set down that courts had cancelled the Local Council invalidation decision. Through **decision no. 332 of 04.06.2009**, the Committee set down that the notified deeds are **direct discrimination** and it decided to contraventionally sanction the respondents by **fine** amounting to 600 lei (art. 2 par. 1 and par. 4, art. 10 lett. h of G.O. no. 137/2000, republished).

(2010) Public interest information. Internet page. Religious cults recognized by the law. Convictions. The Romanian Humanist Association complained about the concept of the internet page developed by the Ministry of Communication, entitled e-Romania. It is shown that the tender book, in the e-Culture module contains sections which convey information about Orthodoxism, information of the public on national religion, teachings of Orthodox faith and administrative structures of the ROC (Romanian Orthodox Church), omitting the other 17 cults recognized in Romania according to the law on religious freedom, or agnostic persons, atheists, etc. The respondent showed that the sections in question were modified in order to include information regarding all the cults recognized in Romania. Through **decision**

no. 340 of 23.11.2010, the Committee set down that the manner in which the site e-Romania was initially conceived, although apparently neutral, led to putting at disadvantage persons belonging to other cults recognized in Romania, since no information in their regard was included (art. 2 par. 3 of G.O. no. 137/2000). Acknowledging the modifications made, it was decided to issue a **recommendation** to the respondent to endeavour to prevent similar situations (art. 2 par. 3 of G.O. no. 137/2000, republished).

2. Discrimination in the access to goods, services, facilities, personal dignity on DISABILITY grounds

(2005) **Information campaign. Advertisement. Social category. Disability. Personal dignity.** The Organization for Children and Adults with Special Needs complained about the development and content of an advertisement for pregnant women who give birth to sick children, supposedly with a disability conveyed in a manner which offends dignity. Through **decision no. 217 of 30.08.2005**, the Committee set down that the respondent had initiated an information campaign justified by a legitimate aim (raising the awareness of pregnant women regarding the importance of health checks), but the method of attaining that aim, i.e how it was achieved was inadequate, built on an offensive content regarding mothers who give birth to sick children, persons with disabilities or suffering from the Down syndrome. Any democratic society gives a particular importance to the protection of persons who are in an inequality position in relation to the majority because of a disability or a disease. It was set down that the notified deeds are **direct discrimination** according to art. 2 par. 1 and par. 3 and art. 19 of G.O. no. 137/2000. Against the respondent was decided to apply the contraventional sanction of **warning** (art. 2 par. 1 and par. 3 and art. 19 of G.O. no. 137/2000, subsequently amended and supplemented).

(2005) **Taxation rules. Interpretation. Differentiation. Disability. Professional status.** The National Authority for Disabled Persons notified NCCD regarding the fact that the Ministry of Public Finance, through the interpretation of certain provisions of the fiscal code applies a differentiated treatment to civil servants in relation to persons employed with a contract. In this case is allowed the exemption from the tax on income obtained by natural persons with severe or accentuated disability employed with individual contract, but persons with severe or accentuated disability who are employed as civil servants in state institutions do not benefit from these exemptions. Through **decision no. 333 of 21.11.2005**, the Committee set down that although the fiscal code does not differentiate, simply referring to the individual labour contract, through the interpretation given by the respondent, the persons with severe or accentuated disability who are employed as civil servants were eliminated from the benefit of tax exemption provided by the law. Or, the criterion which underlay the tax exemption was the severe or accentuated disability and not the conduct of labour relationships. The Committee ascertained that the notified deeds are **direct discrimination** according to art. 2 par. 1 and art. 6 lett. c of G.O. no. 137/2000 and it **recommended** that the respondent should adopt the necessary measures to eliminate the differentiated treatment (art. 2 par. 1 and art. 6 lett. c of G.O. no. 137/2000, subsequently amended and supplemented).

(2006) **Taxation rules. Interpretation. Differentiation. Disability. Professional status.** Mr. B.A.C. complained about the fact that through the provisions of the fiscal code a differentiated treatment is applied to civil servants in relation to persons employed with individual contract. In this case, is allowed an exemption from the tax on income obtained by natural persons with severe or accentuated disability with individual employment contract, but persons with severe or accentuated disability who are employed as civil servants in state institutions do not benefit from these exemptions. Through **decision no. 82 of 14.03.2006** the Committee set down that

it delivered a decision on similar aspects (decision no. 333 of 21.11.2005) and it ascertained that through the interpretation of the fiscal code, persons with severe or accentuated disability who are employed as civil servants were eliminated from the benefit of tax exemption provided by the law. Or, the criterion which underlay the tax exemption was the severe or accentuated disability and not the conduct of labour relationships. Consequently, the Committee ascertained that the notified deeds are **direct discrimination** according to art. 2 par. 1 and art. 6 lett. c of G.O. no. 137/2000 and it **recommended** that the respondent should take the necessary measures to eliminate the differentiated treatment (art. 2 par. 1 and art. 6 lett. c of G.O. no. 137/2000, subsequently amended and supplemented).

(2006) Statements. Offending personal dignity. Correlation with disability. Ms. G.M. complained about the statements addressed to the minor under her care related to his medical situation. Ms. G.M. is a foster parent of minor P.M. infected with HIV. Going with him and with other children at home, the respondent C.D. admonished the children and reproached to Ms. G.M. the following: „Why did you take this disabled person with you?”. Through **decision no. 319 of 14.11.2006**, the Committee endorsed the resolutions of the court, which was notified with a criminal complaint and the resolutions stated that P.M. being really infected with HIV suffered a trauma, being aware that some people blame him for his situation. The Committee set down that through the charged statement made in the public was offended the right to personal dignity in relation to the situation of the minor, considered by the respondent as „disabled”. It was ascertained that the notified deeds are **discrimination** according to art. 2 par. 1 and par. 3 and art. 19 of G.O. no. 137/2000. Against the respondent was decided to apply the contraventional sanction of **warning** (art. 2 par. 1 and par. 3 and art. 19 of G.O. no. 137/2000, subsequently amended and supplemented).

(2007) Access to services designed for the public. Taxi services. Refusal. Disability. Ms. P.E. complained about the refusal of being transported from a dentist. Subsequent to ordering the taxi from the company, at the moment of taking in, the driver mentioned that he cannot accommodate the petitioner, because he cannot open the trunk of the car. Following her insistence to place the trolley on the back bench, the driver had initially accepted and afterward he requested the petitioner to go down. Through **decision no. 44 of 15.03.2007**, the Committee set down that the notified deeds are **direct discrimination** according to art. 2 par. 1 and par. 4 and art. 15 of G.O. no. 137/2000. Against the respondent was decided to apply the contraventional sanction of **warning** (art. 2 par. 1 and par. 4 and art. 15 of G.O. no. 137/2000, republished).

(2007) Social insurance rights. Method of calculation. Disability. Ms. M.E. complained about the method of calculation of her pension entitlements. She indicates that she is a person with accentuated disability and in the calculation of the pension her disability and the benefit offered by the law to persons with disabilities were not taken into account. The respondent indicated that the retirement was done under the law for full length of service and the provisions invoked apply to persons eligible for pension at the date when they were into force. Through **decision no. 230 of 16.07.2007,** the Committee set down that as regards persons with disabilities, different methods of calculation were established for the same category of persons: those who had a disability prior to being insured, retired according to the framework law (no. 3/1997) who did not benefit from age reduction and of the contributory period and persons who had a disability prior to being insured, retired according to special laws who benefit from the reduction of age and contributory period. In such conditions, the existing inconsistency led to a different treatment applied to persons in comparable situations. The Committee decided to issue a **recommendation** to the Ministry of Labour and the National Pensions House to regulate the current situation in order to ensure an equal treatment to persons in the same situation (art. 1 of G.O. no. 137/2000, republished, the equality principle).

(2007) Access to public services. Refusal to enroll a vehicle. Taxation. Disability. Mr. N.S., a person with severe disability (blind person) complained about the fact that the Directorate for Local Taxes and Duties refuses to enroll the vehicle he owns and it requests paying the enrollment tax, although the law regarding the protection of persons with disabilities stipulates an exemption. The respondent indicated that the car cannot be tax exempt since it is not adapted. Through **decision no. 481 of 12.11.2007,** the Committee set down that the law on the rights of persons with disabilities establishes a benefit for these persons as regards a subsidy of the installments of a credit for purchasing a car and exemption from the payment of the fee for using public roads networks. From the standpoint of the subject who enjoys the benefits established, the legislator does not distinguish between the severe and accentuated (locomotor, visual, auditory) disability. The methodological rules for the application of the fiscal code provided that the tax exemption is applicable only to the adapted vehicle used exclusively by the person with disability (locomotor). Thus, persons in similar situations (severe or accentuated disability) were treated differently depending on the level of disability (blind in relation to locomotor) and car (adapted or not adapted), without a reasonable and objective justification. The Committee set down that the notified aspects are **discrimination** according to art. 2 par. 1 and par. 3, art. 10 lett. h of G.O. no. 137/2000. Also, it was decided to issue a **recommendation** with a view to eliminating the provisions which generate discriminatory consequences regarding certain categories of persons with severe or accentuated disability (art. 2 par. 1 and par. 3 and art. 10 lett. h of G.O. no. 137/2000, republished).

(2008) Access to medical services. Conditions of hospitalization and treatment. Persons with mental health problems. The Association Increderea complained about the conditions of hospitalization and treatment provided to beneficiaries within the clinic for persons with mental health problems, as opposed to conditions provided in other medical units. Through **decision no. 350 of 16.06.2008**, the Committee ascertained that by referring through comparison the number of beds, days of hospitalization, budget allotted, etc., there is an obvious difference of underfunding the medical unit for mental health problems, which resulted in the emergence of inappropriate conditions of providing medical services. The Committee ascertained that the notified deeds are **indirect discrimination** according to art. 2 par. 3 and par. 4 and art. 10 lett. b of G.O. no. 137/2000. Also, it was decided to issue a **recommendation** to the Ministry of Health with a view to ensuring the appropriate treatment of persons suffering from mental illnesses in the clinic in question and establishing objective financing criteria of health units (art. 2 par. 3 and par. 4 and art. 10 lett. b of G.O. no. 137/2000, republished).

(2008) Access to public interest information. Persons with disabilities. The Association 1 iunie 2001 and the Center of training for independent living in mimic-gestural language complained about the impossibility of persons with hearing impairments of having access to public interest information, in this case media information programs. Through **decision no. 353 of 26.05.2008**, the Committee ascertained the summoning of the Romanian Television Society by the National Audiovisual Council, summoning by which was found that the public represented by persons with hearing and speaking impairments do not benefit from the right to information, education and culture through audio-visual communication, since the subtitling or interpretation in mimic-gestural language of broadcasted information is not ensured. The Committee set down that the failure to apply the provisions of the law on the protection of persons with disabilities, particularly the adaptation and accessibility of the programs of the Romanian Television Society to the needs of persons with hearing and communication impairment leads to their discrimination in the access to public interest information. Therefore, the failure to adapt the main informative programs to the needs of persons with hearing and communication impairments constitutes **discrimination** according to art. 1 par. 2 lett. c, art. 2 par.1 and par. 3, art. 10 lett. h of G.O. no. 137/2000. Against

the respondent was decided to apply the contraventional sanction of **warning.** Also, it was decided to issue a **recommendation** with a view to adopting the necessary measures to ensure the access to persons with hearing and speaking impairment to the main programs broadcasted by TVR (art. 1 par. 2 lett.c, art. 2 par. 1 and par. 3, art. 10 lett. h of G.O. no. 137/2000, republished).

(2008) **Election poster. Symbols. Personal dignity. Disabilities.** The Institute for Public Policies complained about the publishing and dissemination of certain election posters on which was posted the international sign of persons with locomtor disabilities and the slogan „Get up and Choose!”. The petitioner invoked that the correlation with disabled persons as an election message generates the idea of the lack of will of getting up and casting a vote, which results in a differentiation between possible voters, between those who are active and those who are disabled. Through **decision no. 388 of 08.07.2008**, the Committee set down that the subject of the complaint falls under the freedom of expression. It was set down however that the freedom of the political discourse cannot be regarded as absolute by its nature. By associating the message with the symbol in question, i.e. with persons with locomotor disabilities, their right to personal dignity was offended. It was ascertained that the notified deeds are **discrimination** under art. 2 par. 4 and art. 15 of G.O. no. 137/2000. Also, it was decided to issue a **recommendation** with a view to observing the non-discrimination principle in the elaboration of messages and election posters (art. 2 par. 4 and art. 15 of G.O. no. 137/2000, republished).

(2008) **Access to public services. Public transportation. Attendant. Visual disability.** The Association of Blind Persons from Romania complained about the refusal of local authorities of granting free transport tickets to attendants of persons with visual disabilities, although the relevant legislation makes no distinction between the disabled person and his/her attendant. Through **decision no. 389 of 08.07.2008**, the Committee set down that the legislation on the protection of disabled persons stipulates that facilities should be granted in ensuring access to transportation to both the disabled person and to his/her attendant. In the absence of reasonable and objective justifications regarding the refusal to grant these facilities to attendants, the effect generated puts at disadvantage the person with visual disability. The Committee ascertained that the notified deeds are **discrimination** according to art. 2 par. 4 of G.O. no. 137/2000. Also, it was decided to issue a **recommendation** with a view to adopting measures to prevent similar situations in the future (art. 2 par. 4 of G.O. no. 137/2000, republished).

(2008) **Access to public places. Reasonable accommodation. Audio signaling systems. Persons with disabilities.** Ms. H.A. complained about the fact that her daughter, a person with visual disability (blind person) has the access hampered to the school, since the pedestrian crossing has no semaphores with audible signal. Through **decision no. 596 of 13.11.2008**, the Committee set down that the law on the rights of disabled persons regulates the obligation of public authorities to adapt pedestrian crossings on public streets and roads, by installing systems of audible and visual signaling at intersections with high traffic. With regard to the way in which they observed these obligations, the relevant authorities did not convey a point of view to NCCD. The Committee ascertained that by not ensuring the adaptation of the signaling systems at the pedestrian crossing, persons with visual disability such as the petitioner are affected. The measures in question have the purpose of ensuring equal access of persons who are in a situation objectively different, because of their disability. The Committee ascertained that the notified deeds are **discrimination** according to art. 2 of G.O. no. 137/2000. Also it was decided to issue of **recommendation** to the National Agency for Disabled Persons so that it monitor how the obligations regarding systems of audible signaling are implemented (art. 2 of G.O. no. 137/2000, republished).

(2008) **Access to banking services. Credit. Disability under review.** S.M. complained

about the fact that certain banking companies do not grant credits to persons suffering from disability under review. The petitioner showed that the representatives of a bank conveyed through an e-mail response that they do not grant credits to persons retired on sickness grounds. Through **decision no. 798 of 22.10.2008**, the Committee set down that in the field of granting banking credits, the requests of possible clients are subject to risk analysis, guarantees, eligible income, adjustment quotients, maximum total level of indebtedness, etc. The law on the protection of disabled persons does not ascertain *ipso jure* the rights of these persons to a bank credit, but it awards an entitlement to the interest borne from the state budget. On the other hand, regarding the response of the bank's official, the Committee considered that this was likely to discourage the petitioner from filing an application for a bank credit, being discriminatory. The Committee ascertained that this aspect falls under art. 2 par. 1 of G.O. no. 137/2000 (**direct discrimination**). Also, it was decided to issue a **recommendation** to the bank to endeavour to organize information sessions for employees in the field of equal treatment between persons (art. 2 par. 1 of G.O. no. 137/2000, republished).

(2009) **Accessibility to the building. Reasonable accommodation. Disability.** A.K. complained about the fact that he is a disabled person, he obtained the endorsement of the City Hall to build an access ramp to the entry in his building (n.n. block of flats), but this was not built. The building of the ramp was subject to obtaining the agreement of all owners of flats in the building. The Tenants Association conveyed its permission for the ramp, but the City Hall did not communicate technical directives regarding this structure and several tenants expressed their discontent that it will diminish the staircase. Through **decision no. 371 of 02.07.2009**, the Committee ascertained that the situation in question had direct consequences on the petitioner, that it hampered access to places intended for public use, the lack of a reasonable accommodation being an essential factor. The Committee ascertained the **direct discrimination** of the petitioner and it decided to issue a **recommendation** to the respondent (art. 2 par. 1 of G.O. no. 137/2000, republished).

(2009) **Social rights. Accessibility. Disability.** G.U.P. complained about the fact that he is a person with severe disability and the respondent refuses to pay his allowance and additional personal budget through bank transfer. The petitioner showed that by December 2008 he had received these entitlements through wire transfer, similarly to the pension that had been paid through the same payment method. Because of the failure to pay through those means, in the periods of hospitalization for treatment and recovery he cannot benefit from his rights. The respondent showed that because of certain procedure amendments and of a series of illegal payments, it has been decided to switch to another payment method. The petitioner was offered the payment by money order or at the pay office. The Committee set down that the aim invoked by the respondent, ensuring that the payment be made only to those entitled is a legitimate one, but the method chosen had a disproportionate effect on persons with disabilities, such as the petitioner. Through **decision no. 516 of 29.10.2009,** the Committee ascertained that the notified deeds are **indirect discrimination**, it decided to sanction the respondent by **warning** and by issuing a **recommendation** (art. 2 par. 3 of G.O. no. 137/2000, republished).

(2009) **Education. Educational process. Exclusion. Disability.** L.I.D. complained about the attitude of the teacher and parents to her minor child, pupil in the Ist class, person with disabilities. Although there were no objections to enrollment to school, a week after the start of classes, following a meeting with parents, the pupil's teacher and school director asked the petitioner to withdraw the child from the school, since the children's parents do not accept her. In this regard, teachers initiated an action of collection of signatures. The Committee considered that through the attitude manifested to the minor pupil's situation was generated an intimidating and degrading environment which was based on his disability.

Through **decision no. 101 of 17.02.2009**, the Committee ascertained that the notified deeds are direct discrimination, it decided to contraventionally sanction the teacher by **fine** amounting to 600 lei and the school director with **warning** and issuing a **recommendation** (art. 2 par. 1, art. 2 par. 4 and par. 5, art. 11 par. 1 and 2 of G.O. no. 137/2000, republished).

(2010) Access to public administrative services. Parking place. Disability. Mr. P.M., a person with disability complained about the fact that although the requested a parking place for his car, next to his building, it was not granted to him, although other persons were assigned even more parking places. The respondent did not deny the petitioner's allegations, he invoked his health status and the fact that he assigned a parking place, but not near to the petitioner's building. Through **decision no. 28 of 04.05.2010,** the Committee set down that according to the law on the protection of disabled persons, depending on demands and personal needs, these have the right of being assigned parking places as closer as possible to their residence. The documents of the file indicated that the petitioner's health status requires assigning of such a place, i.e. a space close to his residence. The Committee ascertained that in this case was applied a differentiated treatment by not ensuring reasonable accommodation in relation to the disability of the petitioner, the notified deeds constituting **discrimination,** according to art. 2 par. 1 and 3 of G.O. no. 137/2000. Against the respondent was decided to apply the contraventional sanctioning of **warning** (art. 2 par. 1 and 3 of G.O. no. 137/2000, republished).

(2010) Access to banking services. Opening an account. Card. Internet banking. Mr. R.V. a person with visual impairment, with specialized studies in computer science, user of an adapted IT platform, complained about the conditionalities imposed by the bank for opening an account in his name, a card attached to the account and activating the internet banking service. In this case, was imposed the compulsory appointment of an attorney and the signing of a statement of liability regarding the consequences of carried out transactions. The respondent indicated that the petitioner's situation requires additional prudential means, banking operations in complete understanding, by reading and agreeing by signature the conditions of conduct and possessing a confidential access code. On the other hand, national banking legislation does not include norms regarding a different treatment for blind customers. Through **decision no. 51 of 06.05.2010**, the Committee noted that the regulations in this field and those of the bank do not impose the appointment of an attorney, except for the minor, in case of the death of the account holder, of holders under guardianship. Also, it does not ensue that beyond the obligations undertaken by concluding a contract between the parties for deposit or issuance of bank card, internet services the holders undertake an additional liability for the consequences of undertaken transactions. As regards the need for an attendant, invoked by the bank, the Committee noted that the petitioner's medical documents did not provide the need for a personal assistant. Moreover, the petitioner's legal competence of entering into a contractual relationship with the bank was not disputed, but his simple ability of reading the provisions of the contract to be agreed. Or, giving in a confidential 4 figures or letters code could also be done in Braille format. On the other hand, the petitioner was educated in computer science and he possessed the technical means for using the computer applications. The Committee set down that beyond the purpose invoked, banking prudence and ensuring protection of operations, which could be a legitimate one, the means used for attaining that aim were not proportionate, putting the petitioner at disadvantage in his access to banking services. The concern for the petitioner's situation (visual impairment) had a reverse effect, constituting an obiter dictum of conditions imposed, the petitioner's autonomy being ignored, his possibility of possessing financial resources without an attorney, his own abilities of operating computer programs. The Committee ascertained that the notified deeds constitute **direct discrimination** under art. 2 par. 1 of G.O. no. 137/2000. The Committee decided to issue a **recommendation** so that with regard to the services it offers, the bank take into account all relevant differences and appropriate measures to ensure services reachable by all persons (art. 2 par. 1 of G.O. no. 137/2000, republished).

(2010) Access to education. Enrollment. Personal dignity. Disability. The organization ROMANI CRISS complained about the denial of enrolling two children to the local kindergarten, due to their ethnic origin and their disability. At the moment of enrolling the children, the representative of the kindergarten (the pedagogue) requested the grandmother to leave: "Gypsy, stupid, leave with your children who are as stupid as you!". Wanting to know the reason of denying the enrollment, the pedagogue explained to the father of the children that these, among others "have special needs", i.e they "are disabled, they regard cross-wise". Subsequently it was invoked that they cannot be enrolled since they are not allotted to the kindergarten concerned. Through **Decision no. 206 of 01.09.2010,** the Committee set down that the request regarding the two children was denied, indicating the need of enrolling them to a special kindergarten. Regarding this justification, it was set down that the current medical documents were certifying that those children were able to attend courses. Or, the criterion invoked by the representative of the kindergarten was a supposed disability, expressed through the statements invoked by the petitioner, without a medical statement on the situation of children. In these circumstances, it was ascertained that the notified deeds are **direct discrimination,** based on the correlation with a supposed disability, under the provisions of art. 2 par. 1 and art. 11 par. 2 of G.O. no. 137/2000. Against the respondent was decided to apply the contraventional sanction of **warning** (art. 2 par. 1 and art. 11 par. 1 of G.O. no. 137/2000, republished).

(2010) Access to banking services. Use of card. Disability. Ms. M.C.C. complained about the refusal of issuing a credit card by the bank and the withdrawal of the debit card owned, because she is a person with disability (blind person). The Bank indicated that at the moment of concluding the documents for issuing a credit card, the petitioner was just helped to sign the contractual documents, without reading them, without acknowledging the characteristics of the products, rights and obligations, aspect which could potentially harm the petitioner's interests. The situation of the petitioner makes it impossible for her to use the card through a procedure ensuring security of transactions and confidentiality of the PIN code, involving a significant risk. Granting of the credit card and maintenance of the debit card could put to risk both the client and the bank. The applicable solution could have been issuing an additional card to a mandatory for the petitioner's accounts. Through **decision no. 300 of 20.10.2010**, the Committee referred to its own case-law regarding the failure to provide reasonable accommodation for persons with disabilities (Decision no. 596/13.11.2008). With regard to the subject of complaint, it was set down that there was a limitation in the petitioner's access and use of banking services, not ensuring an accessibility to the information and communication environment according to the special needs of the person with disabilities. The Committee considered that the arguments called by the respondent do not meet a sufficient level of objectivity in relation to the purpose invoked, since the petitioner's situation constituted an element that generated reverse effects in relation to the potential benefit of banking services. In such circumstances, it was set down that the notified deeds constitute **direct discrimination** according to art. 2 par. 1 and art. 10 lett. h of G.O. no. 137/2000. Against the respondent was decided to apply the contraventional sanction of **warning** (art. 2 par. 1 and art. 10 lett. d and h of G.O. no. 137/2000, republished).

(2010) Access to public administrative services. Social services. Disability. Age. Mr. D.I. complained about the refusal of his admission in an elderly home for reasons related to disability, age, disadvantaged category. The respondent indicated that following the request of the petitioner, a committee of assessment was established, which ascertained that he does not meet legal requirements for admission, in this case retirement and age limit requirements. Through **decision no. 454 of 21.12.2010,** the Committee set down that the respondent has not done enough for the petitioner's situation, retaining that he is a disabled person, with an accentuated disability and beneficiary of a disability pension. The law on the rights of disabled persons provides that this category of persons shall benefit from social services provided in day

care and residential centers, public or private and the authorities shall ensure the appropriate social assistance. Thus, persons with disabilities may benefit from social services beyond cases in which they reached the retirement age. The petitioner had been previously institutionalized in an elderly home and according to documents he does not own a property or rent a flat. By not taking into account the petitioner's situation (disability), he was put at disadvantage in relation to other persons, thus the notified deeds constitute **discrimination**, according to art. 2 par. 1 and art. 10 lett. h of G.O. no. 137/2000. Also, it was decided to issue a **recommendation** to show exigency in the procedure of analyzing the files of applicants for social assistance services in elderly homes, in order to observe the principle of non-discrimination (art. 2 par. 1 and art. 10 lett. h of G.O. no. 137/2000, republished).

(2010) **Access to medical services. Classification disability level. Disability**. R.V. and R.M. complain about the fact that R.I. is a person with disability according to medical certificates confirming his health, but he is not given the disability level since he does not fall under the criteria stipulated by relevant medical regulations. In this case, although the medical authorities confirm that the petitioner is a person whose health status generates the deficiencies of a severe disability, the disability level cannot be recognized since the consequences of serious cerebrovascular accidents are not included in the criteria of disability classification. Through **decision no. 422 of 15.12.2010**, the Committee set down that given that similar deficiencies associated to a disability are regulated in the norms of classification of the disability level, the petitioner's situation, although confirmed by medical authorities as one similar to a level of disability was not regulated, which generated adverse consequences with regard to the medical protection and rights arising from this situation. The Steering Committee ascertained that although apparently neutral, in the sense of giving rights to disabled persons, the provisions in question had put at disadvantage persons who suffered cerebrovascular accidents restraining their right of access to the facilities and services provided by the law, given that they needed them. The Committee set down that the notified deeds are **indirect discrimination** according to art. 1 (2), lett. e, point IV in conjunction with art. 1 (3) and art. 2 (3) of G.O. no. 137/2000. Also, it was decided to issue a **recommendation** with a view to doing what is necessary to amend the regulations in question (art. 1 (2), lett. e, point IV in conjunction with art. 1 (3) and art. 2 (3) of G.O. no. 137/2000, republished).

3. Discrimination in the access to goods, services, facilities, personal dignity on AGE grounds

(2003) **Participation to a TV contest. Participation conditions. Age limit.** B.V.P. complained about the fact that in order to take part to a contest broadcasted by a television station (TVR 2), the organizer (S.C. Creative V.I. S.R.L.) requires the condition of a certain age. In order to participate in the TV contest, the participants were filling an agreement which stipulated that their age is between 18 and 45 years. The Committee set down that the notified deeds are **direct discrimination** according to art. 2 par. 1 and 2 of G.O. no. 137/2000. It was found the infringement of the provisions of art. 10 lett. h of G.O. no. 137/2000 on making participation conditional and the refusal of enrolling a person for participation in a contest on age grounds. Also, it was decided to contraventionally sanction the defendant by **warning** (art. 2 par. 1 and 2, art. 10 lett. h of G.O. no. 137/2000).

(2006) **Access to places open for the public. Swimming pool. Age. Self-notification (ex officio).** NCCD was self-notified regarding the prohibition of access of old people inside a swimming pool. Following the denial of access in that swimming pool of a person, a television station filmed a similar incident, the employee at the entrance motivating that there is a

management provision of not allowing the access of persons beyond 35 years. Following investigations, it was concluded that the management provisions concerned the interdiction of introducing inside the complex products purchased outside, but there was no provision prohibiting access of persons older than 35 years. However, the agent ensuring the access had invoked this reason to the persons whose access was denied. Through **decision no. 217 of 01.08.2006**, the Committee ascertained that the refusal of allowing access on grounds of age constitutes direct discrimination according to art. 2 par. 1 and par. 3, art. 10 lett. f of G.O. no. 137/2000. Against the agent was decided to apply contraventional sanctioning by **warning** (art. 2 par. 1 and par. 3, art. 10 lett. f of G.O. no. 137/2000, subsequently amended and supplemented).

(2008) **Access to management bodies. Owners' association. Age.** Ms. T.B. complained about the fact that the president of the owners' association included in the statute of the association a provision which stipulated that the association members who go beyond the age of 65 years are not entitled to be elected in management bodies, showing that the court had ascertained the irregularity of how the executive committee and audit commission were established. The respondent showed that the general assembly of the owners' association had adopted that provision, which was approved by the court. Through **decision no. 464 of 16.06.2008,** the Committee set down that in relation to the interdiction of being part of management bodies applicable to persons aged 65 or who, after the check of management from the period of the mandate had damages, the age condition is not justified. The persons who went beyond the age of 65 years in relation to those who did not go beyond this age are in comparable situations as regards their member's rights and obligations. The existence of a damage during the exercise of a management mandate may justify an interdiction, but going beyond an age cannot be set down as objectively justified by attainment of a legitimate aim. The Committee ascertained that the notified deeds are **direct discrimination** and it decided to contraventionally sanction the association by **warning.** Also, it was decided to issue a **recommendation** in view of endeavouring to eliminate that provision from the statute (art. 2 par. 1 and par. 2, art. 10 lett. h of G.O. no. 137/2000 republished).

(2008) **Access to public services. Medical treatments. Regulations. Age.** L.A. complained about the health regulations which establish the eligibility criteria for antiviral treatment and the selection of the therapeutic scheme for patients with liver cirrhosis, HBV, C and D particularly the provision of treatment only to patients under the age of 65 years. Through **decision no. 605 of 13.11.2008**, the Committee set down that the justification of the condition in question (maximum age) was based on the health status of patients who after a certain age are more sensitive to a particular medication and the combinations of various drugs. On the other hand, the analysis of regulations in question revealed that the application of various treatment schemes takes into account the patient's status of disease and the need to apply a treatment appropriate for the symptoms of the disease and not the age of the patient. Therefore, the health status and not age are crucial in the application of an appropriate treatment. Consequently, by imposing an age limit for the application of treatment schemes were breached the provisions of art. 2 par. 1 of G.O. no. 137/2000. Also, it was decided to issue a **recommendation** to the Ministry of Health and National House of Health Insurance to take measures in order to eliminate provisions which restrict the access of persons over 65 years to antiviral treatment and the selection of the therapeutic scheme for liver cirrhosis, HBV, C and D (art. 2 par. 1 of G.O. no. 137/2000, republished).

(2010) **Access to public services. Medical treatments. Regulations. Age. Self-notification (ex officio).** NCCD was self-notified regarding the conditions for establishing the score in view of approving financing requests for medical treatments abroad, by establishing age criteria (60 years). The respondent showed that the inclusion of the age criterion is not eliminatory, as a person beyond 60 years can obtain a higher score depending on his/her real situation. Through

decision no. 95 of 09.06.2010, the Committee set down that through the regulations in question was generated a differentiation in the sense that persons over a certain age can benefit from the treatment financing only to the extent they reach a score by offsetting with other criteria. In relation to the aim pursued, i.e. the financing of a medical treatment, the Committee considered that the means chosen (imposition of age criteria) were not adequate and proportionate. From this standpoint, the prioritization criteria must be based on objective elements closely related to the medical situation, diagnosis, risk, estimated benefit, etc. The Committee ascertained that the notified deeds are **direct discrimination** according to art. 2 par. 1 of G.O. no. 137/2000. Also, it was decided to issue a **recommendation** to the Ministry of Health in order to eliminate the provisions in question (art. 2 par. 1 of G.O. no. 137/2000, republished).

4. Discrimination in the access to goods, services, facilities, personal dignity on grounds of SEXUAL ORIENTATION

(2004) **Press article. Statements. Personal dignity. Sexual orientation.** ACCEPT Association complained about the content of an article published in the newspaper “Replica de Constanta” which infringed the rights of persons belonging to the gay community. The Committee set down that the article title and its content made a negative correlation between homosexual persons and immorality, being used expressions with pejorative implications, expressing assessments regarding the whole community based on negative opinions, concealed under anonymity. Through **decision no. 354 of 09.12.2004**, the Committee set down that through the manner in which was handled the subject of the press article, the limits of the exercise of the opinion right and freedom of expression were surpassed and were breached the provisions of art. 2 par. 3 and art. 19 of G.O. no. 137/2000, subsequently amended and supplemented. Against the respondent was decided to apply the contraventional sanction of **warning** (art. 2 par. 3 and art. 19 of G.O. no. 137/2000, subsequently amended and supplemented).

(2005) **Public statements. Sexual orientation. Personal dignity.** The non-governmental organizations Center of Legal Resources and Accept complained about the fact that the priest I.S. presented before the congregation, within several public events, information related to the assumed sexual orientation of Mr. P.M. who exercised the position of church cantor. Through **decision no. 16 of 18.01.2005**, the Committee set down that the charged facts, including the removal from the community of parishioners of Mr. P.M. constitute **direct discrimination** based on the correlation with sexual orientation, breaching the right to private life, equality in employment and profession and the right to dignity, according to art. 2 par. 1 and par. 3, art. 5 and art. 19 of G.O. no. 137/2000, subsequently amended and supplemented. Also, it was decided to sanction the respondent by contraventional **fine** amounting to 10.000.000 lei (ROL) (art. 2 par. 1 and par. 3, art. 5 and art. 19 of G.O. no. 137/2000, subsequently amended and supplemented).

(2005) **Access to services. Airline discount offer. Sexual orientation.** The non-governmental organizations Center of Legal Resources and Accept complained about the campaign launched by company T. on the occasion of the celebration of Saint Valentine. The offer provided to lovers a 100% discount for travels to certain destinations. Mr. F.B. wanted to benefit from the discounts offered by that campaign and decided to buy a plane ticket for him and his life partner. At the moment of buying the ticket, it was specified that the reservation and ticket offer is applicable to two opposite sex persons. Through **decision no. 39 of 01.03.2005**, the Committee set down that in fact the access to transport services was denied, taking into account that the company had similar cases, without taking any measure. Although the company’s intention was not to restrict access to that offer based on sexual orientation, the effects generated were **discriminatory**. It was ascertained that the notified deeds constitute indirect discrimination, according to art. 2

par. 3 and that the provisions of art. 10 let. g of G.O. no. 137/2000, subsequently amended and supplemented were breached. The company was sanctioned by contraventional **fine** amounting to 5.000.000 lei (ROL) and it was decided to issue a recommendation (art. 2 par. 3, art. 10 lett. g of G.O. no. 137/2000, subsequently amended and supplemented).

(2005) **Press articles. Photos. Sexual orientation. Personal dignity.** S.A. complained about the publishing of certain press articles and photos concerning him directly and explicitly referring to his sexual orientation. Through **decision no. 231 of 29.08.2005**, the Committee set down that certain comments related to the petitioner's sexual orientation had promoted a bad image by which was infringed his right to dignity. The publishing of photos and references to sexual orientation infringed the right to private life, and through the incitement to the public exposure of the petitioner was infringed the right to personal dignity. The Committee ascertained that the notified deeds are **direct discrimination** according to art. 2 par. 1 and par. 3 and art. 19 of G.O. no. 137/2000, subsequently amended and supplemented. Against the respondent was decided to apply the contraventional sanction of **warning** (art. 2 par. 1 and par. 3 and art. 19 of G.O. no. 137/2000, subsequently amended and supplemented).

(2005) **Medical services. Blood donor. Restrictions. Sexual orientation. Self-notification (ex officio).** NCCD was self-notified regarding the fact that certain categories of persons are not allowed to donate blood. The National Institute of Hematology confirmed the fact that donors with other sexual orientations are considered a group at risk and they are in the category "final contraindication", bringing as argument the practice of European countries which included in this category homosexual and heterosexual people. Through **decision no. 337 of 21.11.2005**, the Committee set down that the imposed measure pursued a legitimate aim, but the means of attaining that aim were not adequate and necessary. The inclusion of all persons with a different sexual orientation in the category „contraindication" cannot be accepted, all the more as fidelity as a form of sexual behaviour was not regarded as relevant in case of persons with a certain sexual orientation. The Committee ascertained that the notified deeds constitute **direct discrimination** according to art. 2 par. 1 and art. 19 of G.O. no. 137/2000, subsequently amended and supplemented. It was decided to issue a **recommendation** in view of adopting the necessary measures to eliminate the discriminatory treatment (art. 2 par. 1 and art. 19 of G.O. no. 137/2000, subsequently amended and supplemented).

(2007) **Statements. Personal dignity. Sexual orientation.** Mr. R.G. complained about the statements expressed against him by two gendarmes, related to his sexual orientation. The petitioner requested the mediation between the parties. Through **decision no. 102 of 25.05.2007**, the Committee set down that through the expressions stated regarding the sexual orientation of the petitioner ("head of queenies"), his personal dignity was breached. Also, it set down that the notified deeds are **discrimination** according to art. 2 par. 1 and par. 4 of G.O. no. 137/2000 and it was decided to sanction the respondent by **warning** (art. 2 par. 1 and par. 4 of G.O. no. 137/2000, republished).

(2007) **Medical services. Blood donor. Restrictions. Sexual orientation. Self-notification (ex officio).** NCCD was self-notified regarding the draft Decree stipulating that certain categories of persons are under the criteria of permanent exclusion from blood transfusions. The Association Accept notified NCCD on similar aspects. According to the norms under debate, the category of the sexual behaviour that places the person in a group of high risk of acquisition of severe infection are men who had, even once, sexual relations (even by using protection with a condom) with another man. Through **decision no. 260 of 29.08.2007**, the Committee set down that as regards the impossibility for men of a certain sexual orientation to donate blood, an objective justification to pursue a legitimate aim cannot be set down, as long as the blood is not subject to detailed tests. The Committee ascertained

that this exclusion constitutes **discrimination** according to art. 2 of G.O. no. 137/2000. Also, it was decided to issue a **recommendation** to the Ministry of Health in order to endeavour to eliminate the discriminatory provisions in question (art. 2 of G.O. no. 137/2000, republished).

(2008) Statements. Right to personal dignity. Sexual orientation. Accept Association complained about the attitude of A.G. and of other persons who expressed insults and discriminatory expressions regarding the owner of a bar/club and the clients present inside it, based on sexual orientation. Being well-known that this club is „gay friendly”, the respondent accompanied by other persons entered the club and expressed phrases like: „dirty fag”, „filthy transvestite”, „licking lesbians”, „wretched fags”. Through **decision no. 800 of 04.12.2008**, the Committee set down that the expression of personal opinions in public must be protected by guaranteeing the freedom of expression. However, the exercise of these rights does not justify the use of a **discriminatory** language based on sexual orientation or on the alleged sexual orientation of some persons (in this case owner or clients). The manner of address of the charged statements and their content was incitement to discrimination, thus the notified deeds fall under the provisions of art. 2 par. 4 and art. 15 of G.O. no. 137/2000. Against the respondent was decided to apply the contraventional **fine** amounting to 4000 RON (art. 2 par. 4 and art. 15 of G.O. no. 137/2000).

(2009) Discriminatory statements. Personal dignity. Sexual orientation. V.L.C. complained about the statements addressed to her by a person directly referring to his sexual orientation. The notified incident referred to the fact that the petitioner was chased by the respondent and the latter addressed insulting words such as “fag, convict, sick shit”. The Committee considered that the notified aspects constitute a behaviour manifested due to the sexual orientation of the petitioner, that had the aim of generating an intimidating, hostile and offensive environment. Through **decision no. 598 of 26.11.2009**, the Committee ascertained that the notified deeds are **harassment** and it decided to contraventionally sanction the defendant with **fine** amounting to 500 lei (art. 2 par. 4 and art. 2 par. 5 of G.O. no. 137/2000, republished).

(2010) Public statements. Football player. Sexual orientation. Accept Association complained about the statements expressed within a radio and TV interview by G.B., in his capacity of shareholder of a football club regarding a possible transfer of a foreign player. Among others, the charged statements concern the following: „Even if it is suppressed (...) I will not take a gay in the team. We would rather play with a junior player than with a gay”. “Well, if it was written on the first page that he is gay?. Well, even if he is not gay and God tells me tonight 100% (...), he isn’t 100%, if such a thing was written on the first page (...) and from Sport Total FM they called me (...) that he is gay (...), good bye, I won’t take him even if they give him to me for free (...)”. The respondents indicated that between the football club and that player there never was a discussion about employment and there were no negotiations. The statement was made within a journalistic event, in which the author of the interview and not the respondent raised the issue of the sexual orientation of the player. Through **decision no. 276 of 13.10.2010**, the Committee set down that both the in the EU and national legislation, the only exceptions allowed from possible differences of treatment are given by the specific nature of a professional activity or the conditions of exercising an activity and the refusal to work with a person is given by a possible professional inadequacy. Thus, the statements of the respondent constitute a behaviour related to sexual orientation, by which is generated a hostile, intimidating and offensive environment, which affects a community of persons, in this case those that have a different orientation than the heterosexual one. Secondarily, these statements offended the dignity of persons who are part of this community. The Committee ascertained that the statements in question are **harassment** according to art. 2 par. 5 and art. 15 of G.O. no. 137/2000. Against the respondent was decided to apply the contraventional sanction of **warning** (art. 2 par. 5 and art. 15 of G.O. no. 137/2000, republished).

CHAPTER IV

CONCEPTS CONSTRUED IN NCCD'S CASE-LAW UNDER THE SCOPE OF DIRECTIVE 2000/78/EC

I. ARTICLE 2 PAR. 2 (A AND B) OF DIRECTIVE 2000/78/EC

Transposition of the concept of direct and indirect discrimination. Prohibition of dismissal. Interpretation of concept.

6.7. The Steering Committee acknowledges the provisions of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation. In this regard, **according to art. 2 regarding the discrimination concept:** (1) For the purposes of this Directive, the "principle of equal treatment" shall mean that **there shall be no direct or indirect discrimination whatsoever** on any of the grounds referred to in Article 1.

6.8. According to par. 2 lett. a of art. 2: **direct discrimination** shall be taken to occur **where one person is treated less favourably than another is, has been or would be treated in a comparable situation**, on any of the grounds referred to in Article 1 (religion or convictions, disability, age, sexual orientation). According to art. 2 par. 2 lett. b of the Directive: **indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons** having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation **at a particular disadvantage** compared with other persons **unless**: (i) that **provision**, criterion or practice **is objectively justified by a legitimate aim** and **the means of achieving that aim are appropriate and necessary**, or ii) **as regards persons with a particular disability**, the employer or any person or organisation to whom this Directive applies, is obliged, under national legislation, **to take appropriate measures in line with the principles contained in Article 5 in order to eliminate disadvantages** entailed by such provision, criterion or practice".

6.9. According to art. 5 of the Directive: „In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned".

6.10. As regards **non-discrimination on disability grounds,** the Labour Code included as a fundamental principle of labour relations the principle of equal treatment to all employees and employers, prohibiting any kind of discrimination, whether direct or indirect (**art. 5 of the Labour Code).** According to art. 59 par. 1 of the Labour Code: „**The dismissal of the employees shall be prohibited:** a) based on sex, sexual orientation, genetic characteristics, age, national affiliation, race, colour, ethnicity, religion, political option, social origin, **disability**, family situation or responsibility, trade union affiliation or activity".

6.11. The provisions with principle value of the Labour Code are discussed extensively in Government Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination, **republished** which ensures especially the transposition in the national law of the provisions of Directive 2000/78/EC. According to art. 2 par. 1 of G.O. no. 137/2000 republished: (…) discrimination means any distinction, exclusion, restriction or preference

based on race, nationality, ethnic origin, language, religion, social category, convictions, gender, sexual orientation, age, disability, non-contagious chronic disease, HIV infection, affiliation with a disadvantaged category, as well as any other criterion which pursues or results in the restriction, hindering of the recognition, use or exercise, under equality conditions, of the human rights and fundamental freedoms or of the rights recognized by the law in the political, economic, social and cultural life or in any other fields of public life". Also, according to art. 2 par. 3 of G.O. no. 137/2000, republished „According to this ordinance, the apparently neutral provisions, criteria or practices that put at disadvantage certain persons in relation to others, based on the criteria referred to in par. (1) shall be deemed to be discriminatory, except when such provisions, criteria or practices are objectively justified by a legitimate aim and the means of attaining it are appropriate and necessary". In the same regard, according to art. 6 of G.O. no. 137/2000: "According to this ordinance, discriminating against a person on ground of his affiliation to a certain race, nationality, ethnic group, religion, social or disadvantaged category, as well as on grounds of his beliefs, age, gender or sexual orientation within a labour and social protection relation, that is exhibited in the following fields, except when the law otherwise provides, is a contravention: a) conclusion, suspension, modification or termination of the labour agreement (...).

6.12. The Committee sets down that in this case the Labour Code regulates in Chapter V the termination of the individual labour agreement and within Section 2-5 it regulates legal aspects on dismissal. According to art. 58 par. 2 of the Labour Code: „A dismissal can be decided for reasons related to the person of the employee or for reasons not related to the employee". In order to protect the employee against possible abuses of the employer, as a guarantee of observing the employee's rights, the Romanian legislator regulates expressly and restrictively in the Labour Code the situations when the employer may decide dismissal, for this purpose establishing a general prohibition clause with permanent nature in art. 59 regarding the prohibition of discrimination on the dismissal of employees. Thus, art. 59 of the Labour Code regulates the grounds which will never form the basis for dismissing employees.

6.13. Art. 61 of the Labour Code enumerates the situations in which the employer may decide dismissal for reasons related to the person of the employee and art. 65 par. 1 defines dismissal for reasons which are not related to the person of the employee. According to art. 61 lett. e of the Labour Code: „An employer may decide dismissal for reasons related to the person of the employee in the following cases: a) when the employee has committed a serious or repeated disciplinary offence related to the labour discipline rules or the rules laid down in the individual employment contract, applicable collective labour agreement or rules of procedure, as a disciplinary sanction"; b) when the employee has been taken in preventive custody for more than 30 days, under the terms of the Code of Criminal Procedure; c) when, by decision of the competent medical examination bodies, a physical and/or mental inability of the employee is found, not allowing him/her to fulfill the duties corresponding to the position held; d) when the employee is not professionally fit to the workplace where he/she is employed; e) when the employee fulfills the standard age and period of contribution conditions and has not requested retirement, under the terms of the law". According to **art. 65** of the Labour Code: „A dismissal for reasons not related to the employee's person is the cessation of the individual employment contract determined by the elimination of the workplace of the employee, for one or several reasons not connected to the employee's person. (2) The elimination of the workplace must be effective and have a real and serious cause".

6.14. In case of dismissal for reasons related to the employee's person, the case of the cessation of the labour contract involves the employee and is due to a fact tightly related to his person, of an attributable action: he committed a serious offence or repeated offences, he is under preventive custody, is not professionally fit (art. 61 lett. a, lett. b, lett. f of the Labour Code). Besides these reasons, the legislator introduces two additional criteria, which

involve the employee and are related to his person, but which are not due to attributable or culpable actions: the employee is physically and/or mentally unable and it fulfills the standard age and the contribution period conditions and has not requested retirement under the law (art. 61 lett. c and lett. d of the Labour Code; under the provisions of art. 56 lett. d of the Labour Code: "An individual employment contract shall cease de jure on the date of communication of the decision of old-age retirement (...), according to the law".

6.15. In the given case, the Committee is notified on the circumstance of cessation of the petitioner's labour contract, in her opinion due to her particular situation (disability), following to analyze to what extent the acts or deeds of the employer, namely the treatment applied to the petitioner was or could be less favourable than that applied to another employee in a comparable or analogous situation. 6.20. In relation to the constitutive elements of the discrimination deed, stipulated in art. 2 par. 1 of G.O. no. 137/2000, the Steering Committee acknowledges that, according to the definition of discrimination, the different treatment in the form of distinction, restriction, exclusion or preference must be based on one of the grounds stipulated by art. 2 par. 1 and it must refer to persons in *comparable situations*, but who are treated *differently* because of their affiliation with one of the categories stipulated in the previously mentioned article. As it emerges from the previously invoked reasoning, in order to have a discrimination deed, there must be two comparable situations for which the applied treatment must have been different on one ground. However this aspect must be construed in conjunction with the provisions of art. 2 of Directive 2000/78/EC which concerns the situation in which a person is treated in a less favourable manner than another person who is in a similar situation is, was or will be treated. (**Excerpt from NCCD's Decision no. 463 of 02.09.2009, Decision no. 511 of 29.10.2009, Decision no. 126 of 07.07.2010**[32]).

The concept of direct or indirect discrimination. The causality link between prohibited criterion and differentiated treatment

6.13. As regards the definition of discrimination provided by G.O. no. 137/2000, republished, the Committee mentions that as for the persons who are treated differently, the treatment in question is due to their affiliation with one of the criteria stipulated by the law, art. 2 of G.O. no. 137/2000, republished. The Committee must analyze if the different treatment was caused by one of the criteria stipulated in art. 2 par. 1, namely race, nationality, ethnicity, language, religion, social category, convictions, gender, sexual orientation, age, disability, non-contagious chronic disease, HIV infection, affiliation with a disadvantaged category which should have been the determining factor in the application of this treatment. The Committee sets down that art. 2 par. 1 does not contain a comprehensive list of discrimination criteria, since the criteria expresis verbis enumerated by the law are completed with the phrase „or any other criterion", which, basically offers the possibility of retaining also other criteria not provided by the law in the perpetration of a discrimination deed. But any of these criteria related to the particular situation of the person who deems himself/herself to be discriminated must have been the determining factor in the application of the different treatment in the case. Or, the condition of the criterion as a determining factor must be interpreted in the sense of existence of an element that is materialized and which constitutes the cause of the discriminatory acts or deeds and which, if not existing, would not determine the perpetration of discrimination. Thus, the nature of discrimination under its constitutive aspect arises from the fact that the difference of treatment is determined by the existence of a criterion, which presumes a causality link between the charged different treatment and the criterion prohibited by the law, invoked for the person that deems himself/herself to be discriminated. The same reasoning is also applicable for indirect discrimination, as regulated

32 Committee Decision no. 463 of 02.09.2009, Decision no. 511 of 29.10.2009, Decision no. 126 of 07.07.2010, reasonings drawn-up by NCCD Steering Committee member Dezideriu Gergely.

by art. 2 par. 3 of G.O. no. 137/2000, mentioning that the causality link is not direct, but the result of an apparently neutral measure or practice which has repercussions on persons in comparable situations, which are distinguished through the occurrence of certain criteria. This aspect results from the definition given by the legislator: „According to this ordinance, the apparently neutral provisions, criteria or practices that put at disadvantage certain persons in relation to others, based on the criteria referred to in par. (1) shall be deemed to be discriminatory, except when such provisions, criteria or practices are objectively justified by a legitimate aim and the means of attaining it are appropriate and necessary." In the same regard, the High Court of Cassation and Justice delivered civil Sentence no. 1530/2009 and civil Sentence no. 2758/2009. Thus, the Committee must analyze from the evidence and documents of the file to what extent a direct or indirect causality link can be retained between the charged facts and the criteria invoked in the case. (**Excerpt from NCCD Decision no. 185 of 19.07.2010**[33]).

II. ARTICLE 2 PAR. 3 OF DIRECTIVE 2000/78/EC. Transposition of the concept of harassment as a form of discrimination. Interpretation of concept.

The Steering Committee refers to the provisions of art. 2 par. 5 of G.O. no. 137/2000 subsequently amended and supplemented, republished. According to art. 2 par. 5: Any behaviour based on a criterion such as race, nationality, ethnic and social origin, language, religion, beliefs, gender, sexual orientation, affiliation to a disadvantaged category, age, disability, the refugee or asylum seekers status or on any other criterion that creates an intimidating, hostile, degrading or offensive environment constitutes harassment and shall be contraventionally punished".

Harassment is a form of discrimination, introduced by the Romanian legislator in the process of transposition of the provisions of Council Directive 2000/43/EC implementing the principle of equal treatment between persons, irrespective of racial or ethnic origin, published in the Official Journal of the European Communities (OJEC) no. L180 of 19 July 2000 and the provisions of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, published in the Official Journal of the European Communities (OJEC) no. L303 of 2 December 2000.

The Committee acknowledges that according to art. 2 par. (3) of Directive 2000/78/EC: „**Harassment** shall be deemed to be **a form of discrimination** within the meaning of paragraph 1, when unwanted conduct related to any of the grounds referred to in Article 1 (n.n. religion or convictions, disability, age or **sexual orientation**) takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States". According to art. 2 par. 5 of G.O. no. 137/2000, republished which transposes art. 2 par. 3 of Directive 2000/78/EC: "Any behaviour based on a criterion such as race, nationality, ethnic and social origin, language, religion, beliefs, gender, sexual orientation, affiliation to a disadvantaged category, age, disability, the refugee or asylum seekers status or on any other criterion that creates an intimidating, hostile, degrading or offensive environment constitutes harassment and shall be contraventionally punished".

In this regard, we set down that in the field of non-discrimination legislation, as the acquis communautaire is transposed, in order to be in the situation of a harassment deed, its constitutive elements must be cumulatively met. Thus the deed of victimization is

33 *NCCD's Decision no. 185 of 19.07.2010, reasoning drawn-up by Dezideriu Gergely, member of NCCD's Committee.*

expressed in a behaviour which may take different forms. The wording of the text includes the phrase "any behaviour". The phrase "any behaviour" indicated the legislator's intention of including a large sphere of behaviours and not a restrictive one, which allows retaining different descriptions in practice which may vary from case to case, defined in the form of statements expressed through words, gesture, acts or deeds, etc.

The purpose or cause of the behaviour is determined by an intrinsic criterion, which is expressly stipulated by the legislator in a non-exhaustive list, taking into account that the legal text presents in a strict enumeration the criteria of "race, nationality, ethnicity, language, religion, social category, convictions, gender, sexual orientation, affiliation with a disadvantaged category, age, disability, the refugee or asylum-seeker status". The non-exhaustive nature if given by the phrase „or any other criterion" connected to the express criteria. The phrase „or any other criterion" basically offers the possibility of retaining any other element not specified by the law, but which is expressed as a determining factor in the perpetration of the discrimination deed named harassment.

The materialization of the behaviour based on any of the criteria provided by the law „leads to the generation of an intimidating, hostile, degrading or hostile environment". This constitutive element of harassment allows retaining those behaviours which, even if not perpetrated intentionally, generate the effect of generating a framework defined as „intimidating, hostile, degrading or offensive". This aspect is all the more obvious as the Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin defines harassment in art. 2 par. 3 as „an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment".

The inclusion of harassment as a discrimination form in the acquis communautaire and its transposition in national legislation is extremely important. Discrimination does not occur per se, only in the form of legal provisions or practices, but also in the form of behaviours which have an impact on the environment in general, ranging from physical violence to racist remarks or statements, until general ostracism. This form of discrimination offends mentally or emotionally the dignity of persons belonging to one minority or another. (see „A comparison between the EU Racial Equality Directive and the Starting Line" in I. Chopin and J. Niessen, The Starting line and the Incorporation of the Racial Equality Directive into National Laws of the EU Member States and Accession States, 2001, pag. 26, 27) (**Excerpt of Decision no. 103/18.02.2008, similarly see Decision no. 208/20.02.2009, Decision no. 613/13.11.2008, Decision no. 87/02.06.2010, Decision no. 107/09.06.2010, Decision no. 149/07.07.2010, 276 of 13.10.2010,** etc.[34]).

III. ARTICLE 2 PAR. 4 OF DIRECTIVE 2000/78/EC

Transposition of the concept of instruction to discriminate (instruction or order to discriminate). Interpretation of concept.

The Steering Committee refers to the provisions of art. 2 par. 2 of G.O. no. 137/2000, republished which stipulate that: „For the purpose of this ordinance, the order to discriminate against persons based on any of the grounds stipulated in par. (1) shall be regarded as discrimination". The instruction to discriminate or otherwise the order to discriminate is a form of discrimination, introduced by the Romanian legislator in the process of transposition of the provisions of Council Directive 2000/43/EC implementing the principle of equal

34 Committee Decision no. 103/18.02.2008, Decision no. 208/20.02.2008, Decision no. 613/13.11.2008, Decision no. 87/02.06.2010, Decision no. 107/09.06.2010, Decision no. 149/07.07.2010, Decision no. 276/13.10.2010, reasonings drawn-up by NCCD Committee member Dezideriu Gergely.

treatment between persons, irrespective of racial or ethnic origin, published in the Official Journal of the European Communities (OJEC) no. L180 of 19 July 2000 and the provisions of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, published in the Official Journal of the European Communities (OJEC) no. L303 of 2 December 2000.

In this regard, we set down that in the field of non-discrimination legislation, as the acquis communautaire is transposed, in order to be in the situation of an instruction to discriminate, its constitutive elements must be cumulatively met. Thus, the order to discriminate is expressed through a mandatory precept, in written or oral form, issued by an authority or empowered person, to be fulfilled by those concerned with the purpose of discriminating and differently treating persons who are in comparable or analogous situations, without a reasonable and objective justification in the meaning of art. 2 par. 1 of G.O. no. 137/2000, republished. The different treatment in the meaning of art. 2 supposes „any distinction, exclusion, restriction or preference based on race, nationality, ethnic and social origin, language, religion, beliefs, gender, sexual orientation, age, disability, non-infectious chronic disease, HIV contamination, affiliation to a disadvantaged category, as well as on any other criterion aiming or resulting in the restriction or hindering of the recognition, use or exercise, under equality conditions, of the human rights and fundamental freedoms or of the rights recognized by the law in the political, economic, social and cultural field, or in any other fields of public life”. Similarly, Council Directive 2000/43/EC implementing the principle of equal treatment between persons, irrespective of racial or ethnic origin defines in art. 2 par. 4 the order or instruction to discriminate, stipulating: „An instruction to discriminate against persons on grounds of racial or ethnic origin shall be deemed to be discrimination within the meaning of paragraph 1” (n.n. par. 1 of art. 2 of Directive 43/2000 defines direct and indirect discrimination) (**Excerpt from Decision no. 278 of 22.04.2008, NCCD**[35]).

IV. ARTICLE 3 OF DIRECTIVE 2000/78/EC
Scope. Distinction between chronic disease and DISABILITY. Medical data

6.14. Colegiul este de opinie că se impune a stabili dacă prezenta speță urmează a fi anal6.14. The Committee considers that it is important to determine whether this case shall be analyzed with regard to incidence of disability or non-contagious chronic disease/ disadvantaged category. The European Court of Justice, in the case Sonia Chacon Navas v. Eurest Colectividades SA has settled that Directive 2000/78/EC has the objective of establishing a general framework in the field of labour relations in order to combat discrimination “and in this context, the disability context must be understood as referring to a limitation, resulting notably from physical mental or psychological impairments and which hinder the participation of the person in question to professional life”. However, by using the concept of “disability” in art. 1 of the Directive, **the legislator deliberately chose a term that differs from disease** (sickness). Consequently, **the two terms cannot be simplistically treated identically**. In conjunction with ground 16 of Directive 2000/78 regarding the need to adopt measures to accommodate the needs of persons with disabilities at work and which fulfill a major role in combating discrimination on grounds of disability, the Community court mentioned that the disability notion refers to the assumption that participation to professional life would be hindered for a long period. On the other hand, the Court took into account the fact that, according to ground 17, the directive does not require recruitment, promotion or retention in employment of a person who is not competent, able and available to perform the

35 *Committee's decision no. 278 of 22.04.2008, reasoning drawn up by Dezideriu Gergely, NCCD Committee member*

essential functions of the position involved, without prejudice to the obligation of ensuring a reasonable accommodation for persons with disabilities. Consequently, the European Court has settled that a person who was dismissed by the employer based on disease/sickness does not fall under the scope of the framework established for combating discrimination on disability grounds, as regulated by Directive 2000/78/EC (see case Sonia Chacon Navas v. Eurest Colectividades SA, judgment of 11 July 2006).

6.15.. In order to determine whether this case subject to NCCD settling falls under disability or not, the Committee will take into account the boundaries imposed by the European Court of Justice in the case Sonia Chacon Navas v. Eurest Colectividades SA. The hypothesis based on which this problem shall be analyzed is mentioned in the judgment of the European Court of Justice. Firstly, the Court shows that given the need to ensure an uniform application of Community law and the equality principle, the terms of certain provisions of Community law which do not refer to the Member States law must normally benefit from an autonomous and unitary interpretation in the Community, considering the context of the provisions and the objectives pursued by the law in question (see case Sonia Chacon Navas, judgment of 11 July 2006, par. 40, similarly case 327/82 Ekro, 1984, ECR 107, par. 11 and case C-323/03 Commission v. Spain, 2006 ECR 1- 0000, par. 32). Secondly, **the disability concept must be understood as concerning a limitation, resulting notably from physical, mental or psychological impairments and which hinder the participation of the person in question to professional life, for a long period of time.**

6.16. The **national law** (no. 448/2006) defines the disabled person as that person who, due to physical, mental or sensorial impairments lacks the skills of normally conducting daily activities, requiring protection measures with a view to recovery, integration and social inclusion. From the documents submitted at the file it results that with regard to the petitioner was issued a decision regarding his work capacity (…). The decision concerns the reduction of the work capacity to at least half, a IIIrd disability level at the date of review, classified as IIIrd level of disability, date of occurrence of disability 9.06.2004 with a review term at 21.04.2010. According to the exit letter and medical letter issued by the Clinical Hospital of Recovery C. the diagnosis is „subtle right disabling hemi paresis, disabling cerebellum syndrome, old craniocerebral trauma, hemorrhagic bi-frontal contusion, right operated urolithiasis, subjective post-comitional syndrome". Also, according to the examination bulletin no. 123/13.04.2009 issued by Clinic p. III C s found "a reduced efficiency as follows: "reduced memory and increased tympanum (holds approximately 50% of the sample material).

6.17. Therefore, acknowledging the situation which results from the medical documents, the Committee considers that **there is a limitation with regard to the petitioner** (reduction by at least a half of the work capacity) **which results from physical, mental or psychological impairments** (classification in IIIrd level of disability) and **which hinders his participation to the professional life for a long period**. This last aspect results from the duration ascertained between the date of occurrence, 2004 and the last date of review, 2010. Although the given situation does not result from a document attesting a disability, stricto sensu, correlated to the national law no. 448/2006 on the protection and promotion of the rights of disabled persons, the Committee will refer to the interpretation given to the disability notion by the European Court of Justice. The interpretation given to the disability notion by the Court of Justice indicates that the **national court** (n.n. including NCCD) **is not bound by the internal law definition** of this notion, being compelled to interpret it according to the criteria established by the Community court, taking into account that there is debate about the application of the internal provisions of transposition of Directive 2000/78, which involves the scope of community law (see in the same regard Ovidiu Tinca, Romanian Magazine of Labour Law no. 3/2009, Comments regarding discrimination on disability grounds in a case of dismissal, Wolters Kluwer Romania). Thus, the Committee sets down that **the situation of the petitioner in this case falls under the notion of disability and implicitly of legal requirements stipulated by national law** (G.O. no. 137/2000 republished) **of**

transposition of Directive 2000/78/EC. In conjunction with this situation, the Committee refers to the provisions of law no. 448/2006 subsequently amended and supplemented on the protection of disabled persons, particularly to the concept of reasonable accommodation transposed in national law (**Excerpt from NCCD Decision no. 126 of 07.07.2010**[36]).

Scope. Distinction between chronic disease and DISABILITY. Absence of medical data.

6.16. The European Court of Justice, in the case Sonia Chacon Navas v. Eurest Colectividades SA settled that Directive 2000/78/EC has the objective of establishing a general framework in the field of labour relations for combating discrimination and „in this context, the concept of disability must be understood as concerning a limitation, resulting notably from physical, mental or psychological impairments and which hinder the participation of the concerned person to the professional life. However, through the use of the concept of „disability" in art. 1 of the Directive, the legislator deliberately opted for a term which differs from „disease" (sickness). Consequently, the two terms might be simplistically treated identically". In conjunction with ground 16 of Directive 2000/78, regarding the need to adopt measures meant to take into account the needs of disabled persons at work and which fulfill a major role in combating discrimination on grounds of disability, the Community court mentioned that the disability notions refers to the assumption that professional life is hindered for a long period. On the other hand, the Court took into account that according to ground 17, the Directive does not require the recruitment, promotion or retention in employment of a person who is not competent, capable and available to perform the essential functions of the position, without prejudice to the obligation of providing reasonable accommodation for disabled persons. Consequently, the European Court settled that a person who was fired by the employer based on disease/sickness does not fall under the scope of framework established for combating discrimination on disability grounds, as regulated through Directive 2000/78/EC (see case Sonia Chacon Navas v. Eurest Colectividades SA, judgment of 11 July 2006).

6.17. **In the absence of any** subsequent **medical data regarding the nature and course of the** petitioner's **illness**, the Committee is not in a position of ascertaining, according to the data of the file that the petitioner's illness falls under the scope of the national law governing the legal protection of persons with disabilities. The petitioner **did not submit any medical document that** would enable such a determination. On the other hand, at least from the allegations of the petitioner, it results that **her illness generates a certain limitation** which results from physical impairments, **but this does not hinder her participation** to the professional life for a **long period.** Or, such a premise would eliminate the scope of the legal protection arising from Directive 2000/78/EC and its transposition in internal law with regard to this case, correlated to measures regarding the protection of disabled persons and provision of reasonable accommodation. On the other hand, the Committee sets down that the national law, in art. 2 par. 1 of G.O. no. 137/2000, republished regulates discrimination, beyond the criteria covered by Directive 2000/78/EC referring to the differentiated treatment based on non-contagious chronic disease or any other criterion. Or, from this standpoint, the situation raises falls under the scope of G.O. no. 137/2000 on the prevention and sanctioning of all forms of discrimination (**Excerpt from NCCD's decision no. 511 of 29.10.2009**[37]).

Scope. The employer capacity. Distinction between the recruitment policy and personal opinions. SEXUAL ORIENTATION.

6.12. It is obvious that in the context of a journalistic approach related to player I.I. which was subject of debate in the written press and in the media, including as regards his possible sexual orientation, the respondent expressed his position presenting an opinion

36 NCCD's decision no. 126 of 07.07.2010, reasoning drawn up bye Dezideriu Gergely, NCCD Committee member.
37 NCCD's decision no. 511of 29.10.2009, reasoning drawn up bye Dezideriu Gergely, NCCD Committee member.

regarding the player in question. Thus, the legitimate question arises whether the expression of this position can be correlated to the capacity of employer in relation to the policy of the company he represents, regarding possible labour relations which football players would enter into as workers. Subsequently, the question arises whether the statements in question are enough to presume the existence of a discriminatory employment policy on sexual orientation grounds, which would presume the obligation to prove that the employment practice does not accord with these statements.

6.13. In the analysis of these aspects, the Committee refers to the case-law of the European Court of Justice. In case C-415/93 quoted by the petitioner, Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman, Royal club liégeois SA v Jean-Marc Bosman and others and Union des associations européennes de football (UEFA) v Jean-Marc Bosman, the national court appealed to the Court of Justice among others with regard to the interpretation of the consistence with the Treaty of transfer rules which generated a discrimination on nationality grounds. As it results from the judgment delivered by the European Court of Justice on 15 December 1995, in case Bossman, many national football associations adopted rules that restricted the possibility of recruiting or involving in competition players of foreign nationality. At a certain point, UEFA committed to suppress the restrictions in the numbers of contracts concluded by each club with players from other member states and on the other hand, to set to two the number of these players who can participate in each game. In 1991, UEFA adopted the rule named „3+2" providing the possibility for national associations of limiting to three the number of foreign players that a club may allow in a game of first division of national championships, plus two players who played for a continuous period of 5 years in the country of the national association in question, of which 3 years as juniors. This limitation also applied to games in the competitions for club teams organized by UEFA (see Decision of 15 December 1995 in case C-415/93, par. 25-27). As regards the rules prescribed by the football sport association, the Court settled that *„taking into account the objectives of the Community, the exercise of sports concerns Community law only to the extent it constitutes an economic activity within the meaning of art. 2 of the Treaty* (see Decision of 12 December 1974, Waleave c. Union Cycliste Internationale, 36/74, Rec.p. 1405, point 5). This is the case of professional or semi-professional players, as long as they perform services under remuneration or remunerated services (see Decision of 14 July 1976, Dona c. Mantero, 13/76, Rec. p. 1333, point 12). The application of art. 48 of the Treaty is not excluded by the fact that the rules regarding transfers dominate economic relations between clubs rather than labour relations between clubs and players. Indeed the fact that these employer clubs are obliged to pay compensations when they recruit a player from another club affects the players' opportunities of finding a job and the conditions under which this job is offered (see Decision of 15 December 1995, Bossman, C-415/93, par. 72 and 74). The European Court of Justice ruled with regard to nationality clauses that these cannot be deemed to comply with art. 48 of the Treaty, under penalty of depriving this provision of its effectiveness and the purpose of not depriving individuals of their fundamental right of free access to a job in the Community (see Decision of 15 December 1995, Bossman, C-415/93, par. 128).

6.14. On the other hand, in the case C-54/07, Centrum voor gelijkheid van kansen en voor racismebestrijding v. Firma Feryin NV, the national court appealed to the Court of Justice in order to establish if the public statement of an employer constitutes direct discrimination, after the latter published a clear labour offer. Essentially, it regarded the public statements of the manager of an enterprise that his enterprise was recruiting plumbers, but that he couldn't hire "strangers" because of the reluctance of customers of allowing them in their private home during the works. In decision of 10.07.2008, the Court of Justice set down that the public statements of the employer that he won't employ persons with a certain ethnical or racial origin could seriously discourage certain candidates from applying, which could hinder their access on the labour market and thus constituting discrimination in employment

(see decision of 10.07.2008, par. 25, content point 1). On the other hand, to the question if such a statement is enough to presume a discriminatory policy, the Court gave an affirmative answer. The Court set down that article 8 of Directive 2000/43 stipulates that the respondent has the burden to prove that there was not breach of the equality of treatment principle when certain deeds allow to presume to existence of a direct or indirect discrimination. The obligation of proving the contrary, thus incumbent upon the presumed author of a discrimination, depends merely on finding a presumption of discrimination, as long as this is not based on proven facts. Thus, the public statements that an employer will not hire employees with a certain ethnic or racial origin may constitute such deeds (see decision of 10.07.2008, par. 30, 31, content point 2).

6.15.From the standpoint of Community law, it is obvious that protection against discrimination on sexual orientation grounds comprises the area of labour relations. The performance of sports, particularly in the case of professional football players who performed an activity under remuneration or carry out provisions of remunerated services is of interest for Community law, given that it is an economic activity. In other words, protection against discrimination also covers this area of activity. Otherwise, Directive 2000/78/EC regulates the general framework of equal treatment with regard to employment and occupation, being transposed in national legislation through G.O. no. 137/2000 on the prevention and sanctioning of all forms of discrimination, republished…

6.18. Of particular interest with regard to the case subject to settling is whether its subject determines the materialization of a concrete or effective legal labour relationship, both in terms of subjects and consequences arising from such a relationship.

6.19. Beyond the conflicting allegations of the parties, in relation to the case-law of the European Court of Justice and the case subject to judgment, the Committee sets down a series of issues. For example, in the case Feryn C-54/07, the active subject of the statements has a specific capacity, fulfilling not only the role of representative, but also that of manager of the enterprise, which calls into question the ability of an exercise of authority with regard to the role that subject fulfills as employer. In case Bossman C-414/93, the element subject to analysis is an express rule prescribed by football associations which imposes a sine qua non clause on nationality grounds. In the Feryn case, the Court set down that the statements of the employer discourage candidates from applying and could hinder their access on the labour market.

6.20. In the light of these grounds, the Committee considers that this case will be analyzed **beyond** the scope of a possible labour relationship. The Committee considers that the statement of the respondent cannot be seen as originating from an employer/legal representative of the employer or a person responsible for hiring, even if this held at the date of the statements the capacity of shareholder of F.C. S.B. S.A. As regards the consequences caused by the statement in question, unlike the Feryn case, this does not have the same echo over potential candidates, since the recruitment process is not performed based on a public offer or direct negotiation, following a selection process which supposes an application and analysis followed by pre-selection. As shown by the European Court of Justice, as regards professional football players, the recruitment process is atypical, since the players' opportunities of finding a job and the offer are correlated to negotiations between clubs and not between the player and club. Similarly, as regards the Bossman case, the burden of proof was transferred to the respondents (defendants) in order to submit objective justifications, since the merits in question were based on proven facts, i.e. the existence of sine qua non rules based on nationality. In the current case subject to settling is under debate essentially the reaction of the respondent to the journalists' action in relation, among others, to the sexual orientation of a football player. Or, the potential material element of the contravention stipulated by art. 5 (conditioning) or art. 7 (refusal) of G.O. no. 137/2000 is not materialized in practice, it does not have consequences for a community, all the more as, if it had been

materialized, it would have undoubtedly concerned the particular situation of player I.I. Or, if the subject of the complaint had been set down in relation to such a deed, there would have been debate about the active capacity to stand the proceedings of the petitioner, as long as a request during the negotiations from the person who would deem herself discriminated would have missed. On the other hand, since the topic of sexual orientation is indissolubly related to an aspect of private life, the question would occur whether there would be a transfer to the respondents of a „probatio diabolica" which would impose an impossible burden of proof in proving that employment does not interfere with sexual orientation. On the other hand, however, F.C. S.B. S.A. indicated that it did not initiate any negotiation for recruitment, thus employment was never discussed with regard to player I.I., which excludes the existence of possible conditioning or of a discriminatory refusal….

6.33. The Committee considers that the statements of the defendant, as regards their effect, led to offending the right to dignity of homosexual persons, within the meaning of art. 2 par. 5 of G.O. no. 137/2000, republished. 6.34 Finding that the statements in question meet the elements of a discrimination form, within the meaning of G.O. no. 137/2000, republished, as stipulated in art. 2 par. 5, the Committee considers that they subsequently meet the elements of the deed stipulated in art. 15 of G.O. no. 137/2000, republished. In the Committee's opinion, the discrimination form of Community law defined by the European legislator as harassment was transposed in the non-discrimination legislation in art. 2 par. 5 and was regulated in the special part of the law, in Section V, art. 15 which ensures in terminis the protection of the right to personal dignity (**Excerpt from NCCD's decision no. 276 of 13.10.2010**[38]).

Scope. The capacity of priest of RELIGIOUS CULT. Distinction between labour relationship and exclusion for not complying with the statute of the cult. Lack of jurisdiction

6.8. The Committee sets down that according to art. 29 of the Romanian Constitution „Freedom of thought, opinion, and religious beliefs shall not be restricted in any form whatsoever. No one shall be compelled to embrace an opinion or religion contrary to his own convictions". According to art. 2 "Freedom of conscience is guaranteed; it must be manifested in a spirit of tolerance and mutual respect". According to par. 3 of art. 29: "**All religions shall be free and organized in accordance with their own statutes, under the terms laid down by law**", and according to art. 5: **Religious cults shall be autonomous from the State and shall enjoy support from it**, including the facilitation of religious assistance in the army, in hospitals, prisons, homes and orphanages".

6.9. According to article 9 of the European Convention on Human Rights, „Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance". Par. 2 of art. 9 stipulates that: "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, *for the protection of public order, health or morals, or the protection of the rights and freedoms of others*".

6.10. In decision no. 350 of 19.12.2005, in the case V.M. v. S.C.M. the Steering Committee of NCCD underlined the fact that, as settled by the European Court in many of its judgments in the field „the freedom of thought, conscience and religion represents the foundation of a democratic society within the meaning of the European Convention on Human Rights. This is related to the idea of pluralism – is acquired with difficulty over the centuries – inherent for such a society (ECHR, 14 December 1999, Serif c/Greece, Recueil 1999-IX, par.49; 18 February 1999, Buscarini et autres c/ Saint –Marin, Recueil 1999-I, par

38 NCCD's decision no. 276 of 13.10.2010, reasoning drawn-up by Dezideriu Gergely, NCCD Committee member.

34, 26 October 2000, Hassan et Tchaouch c/Bulgarie, Recueil 2000 XI, par. 60). Regarded in terms of its religious dimension, this freedom is one of the components „most essential of the spiritual identity of believers, of their conception for life, but it represents at the same time a good all so precious to atheists, Gnostics, skeptical or indifferent”. (ECHR, 25 May 1993, case Kokkinakis vs. Greece, Series A, no. 260-A, par. 31; 13 December 2001, case Eglise metropolitaine de Bessarabie et autres c/ Moldova, Recueil 2001-XII, par. 114).

6.11. Through decision no. 259 of 03.07.2006, in case S.A. and S.M. v. the Pentecostal Cult and others, the Steering Committee set down that the freedom of religion is an inseparable part of the freedom of thought and conscience. As settled by the European Court of Human Rights, the freedom of thought, conscience and religion, through its religious dimension is among the essential elements of identification of those with a certain faith and conception for life (see case Otto-Preminger-Institut c. Autriche, 14 October 1985, Series A, no. 295-A, par. 47). This freedom includes the right to join or not join a religion, to practice it or not practice it or to join it. **The state authorities are obliged to respect all cults, equally; they cannot require adherence to a particular religion or forbid it, beyond the limits restrictively laid down in art. 9 par. 2 of the European Convention on Human Rights** (see C. Barsan, European Convention on Human Rights, Comment on articles, Vol. I, Rights and freedoms, page 709).

6.12. In this regard, a separate issue of the freedom of religion is given by the relationship between religion and state, viewed in terms of obligations imposed to state authorities by the provisions of art. 9 par. 1 of the European Convention on Human Rights. In terms of general relationships between the state and religion, the European Court of Human Rights settled, with principle value, that **the right to religious freedom excludes any deliberation by the state with regard to the legality of certain religious beliefs or to how they are expressed** (see C. Barsan, European Convention on Human Rights, Comment on articles, volume I, Rights and freedoms, page 712).

6.13 The concept of the European Court of Human Rights is that **religious communities must enjoy full autonomy in the organisation of their activity and in how the believers participate in these activities.** In this regard, it was noted that in general, religious communities traditionally and universally exist in the form of organized structures. **They observe rules that their followers often see as being of divine origin. The religious ceremonies have a sacred value for followers, when they are celebrated by bishops of cults, especially empowered under the same rules. Participation to the life of the religious community represents a manifestation of religion and when the emphasis is put in the organisation of the religious community, art. 9 must be interpreted in the light of the provisions of art. 11 which protects associative life from any undue interference from the state authorities.** Thus considered, **the right of believers to religious freedom assumes the possibility of the religious community in question to exist peacefully, without any arbitrary interference from the state.** Indeed, the autonomy of religious communities is crucial for the pluralism characterizing a democratic society and is at the heart of the protection established through art. 9 of this freedom (see ECHR, case Hassan and Tchaouch v. Bulgaria, complaint no, 30985/96, Decision of 26 October 2000, par. 62).

6.14. The European Court of Human Rights clearly and accurately summarized the relationship between state and religion when it settled that „**in the exercise of the statutory privilege in the field and in its relationship with the various religions, cults and beliefs, the state must remain neutral and impartial, which is crucial for „maintaining” pluralism and good functioning of the rules of democracy**” (see case Hassan et Tchaouch c Bulgarie, ECHR, par. 78). On the other hand the case requires reference to the provisions of art. 29 par. 3 and 5 of the Romanian Constitution which lay down in par. 3: „**All religions shall be free and organized in accordance with their own statutes, under the terms laid down by law”** and according to par. 5 **“Religious cults shall be autonomous from the State and shall enjoy support from it (…)”.**

6.15. The Constitutional Court of Romania analyzed the legal nature of the religious units and their relations with the Romanian state, as they result from the provisions of art. 29 par. (1) - (5) of the Constitution. Thus, through Judgment no. 640 of 10 June 2008, published in the Official Gazette no. 506 of 4 July 2008, the Constitutional Court ascertained that "**the composition of religious cults is made up of all believers of a particular religion, they are autonomous from the state and organized according to their own statutes**, under the law. Therefore, cults have a spiritual role in the Romanian society, being obvious that their legal nature is not of state entities since **they are autonomous from the state**. **The internal discipline of a cult is regulated through specific legal acts, appropriate for conducting the spiritual role**, by observing the fundamental human rights".

6.16. As regards the state, the Constitutional Court held that „it is a political organisation, that performs its duties by exercising public functions. Or, **the state does not exercise public functions in the field of internal activity of religious cults** (...)". The Court's opinion was that „is groundless the unconstitutionality criticism regarding the infringement of art. 21 of the Constitution, on the *access to justice.* Thus, **courts are not competent to exercise justice within religious cult for deeds of violations of internal discipline**, since the liability in the field is not regulated through legal rules of ordinary law, but the rules of the cults themselves. Moreover, it is fair to establish the disciplinary liability of the clerical staff by the cults' own bodies, since they are the only ones which can determine of the deeds of indiscipline committed are compatible or not with the spiritual role of the cult".

6.17. The Court set down as groundless the criticism regarding the infringement of art. 21 par. (4) of the Constitution, given that a religious cult is autonomous from the state and has a spiritual role in the society and the concept of "*own religious courts*" settles their legal nature of *bodies of religious jurisdiction*, „**which aim only to restore internal discipline of the cult and not the legal order established through general statutory norms**" (see Judgment no. 640 of 10 June 2008, published in the Official Gazette no. 506 of 4 July 2008).

6.18. Taking into account the unconstitutionality criticism regarding the infringement of art. 4 and 16 of the Constitution, the Constitutional Court ascertained that „this is groundless since, **in the field of liability for breaching internal discipline, the clerical staff of cults are in different situations from the lay citizens**, meaning that the first are subject to the special legal and canonical norms and the other citizens are subject to the rules with general applicability. In relation to the principle of equality, the case-law of the Constitutional Court has constantly settled that the law may establish different legal treatment, objectively and reasonably justified, for different situations. The different treatment is justified through the different legal status of the members of the (See Judgment no. 640 of 10 June 2008, published in the Official Gazette no. 506 of 4 July 2008). The Court also rejected the criticism regarding the breaching of the provisions of art. 53 of the Constitution „**since the courts have no jurisdiction to judge disciplinary infringements of the internal discipline of religious cults and consequently, the religious personnel does not have access to justice in disciplinary matters** (see Judgment no. 640 of 10 June 2008, published in the Official Gazette no. 506 of 4 July 2008).

6.19. As settled by the European Court of Human Rights, **the religious communities must enjoy full autonomy in the organisation of their activity and in how believers participate in these activities.** In this context, the Committee considers that the relevant constitutional provisions prevail and it cannot be interpreted that the Committee would be entitled to deliver judgments on aspects regarding disciplinary inquiry and the exclusion of members of certain religious cults according to their own statutes of organisation and operation, as well as on deeds committed in relation to the decisions of the cult according to own statutory regulations. All the more, the Committee cannot deliver judgments regarding the statutes and canons of religious cults. In relation to this aspect, **the Steering Committee restates the principle settled by the European Court of Human Rights**, with value of principle, that the

right to religious freedom excludes any judgment from the state as regards the legitimacy of certain religions or how they are expressed (**Excerpt from NCCD Decision no. 165 of 12.07.2010**[39]).

Observance of holidays and rest days in employment relationships (RELIGION).

The European Convention on Human Rights, ratified by Romania through Law no. 30/1994, published in the Official Gazette no. 135 of 31.05.1994, stipulates in article 9: „Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others".

The **Romanian Constitution** stipulates in **article 41** regarding Labour and the social protection of labour in **par. 1** that: „The right to work shall not be restricted. Everyone has a free choice of his/her profession, trade or occupation, as well as work place". **Article 29** stipulates that: (...) freedom of religious beliefs shall not be restricted in any form whatsoever (...). Freedom of conscience is guaranteed; it must be manifested in a spirit of tolerance and mutual respect". Also, **article 16** regarding the Equality of Rights, in **par. 1**, the Romanian Constitution stipulates that: "Citizens are equal before the law and public authorities, without any privilege or discrimination". **G.O. no. 137/2000** on the prevention and sanctioning of all forms of discrimination prohibits direct and indirect discrimination and in **art. 6 lett. d** stipulates: According to this ordinance, discriminating against a person on ground of his affiliation to a certain religion, (...) within a labour and social protection relation, that is exhibited in the following fields, except when the law otherwise provides, is a contravention: **professional** training, advancement, reconversion and **promotion**".

The Committee for Human Rights in General Comment no. 22 adopted on 30 July 1993, regarding the Right to the Freedom of thought, conscience and religion, stipulated in article 18 of the **International Covenant on Civil and Political Rights**, in paragraph 4 mentions: „the freedom of manifesting religion or belief may be exercised „either individually or collectively, in public or private". **The freedom of manifesting one's religion** or belief in worship, participation, practice or teaching **comprises a large range of acts**. The concept of worship extends to ritual and ceremonial acts directly expressing faith, as well as the various practices integrated in such acts, **including** the building of worship places, the use of ritual procedures and objects, exposure of symbols and **observance of holidays and rest days**". In the same Comment, regarding article 18, paragraph 3, the Committee mentions: "Article 18.3 **allows restrictions** to the freedom of manifesting one's religion or faith **only if the restrictions are stipulated by the law and are necessary to protect public safety, order, health or morals or fundamental rights and freedoms of others (...).** In the interpretation of the purpose of the permissible clauses in terms of restrictions, the **State** parties **should proceed from the need to protect the rights** guaranteed by the Covenant, **including the right to equality and non-discrimination**, taking into account any criterion specified in articles 2, 3 and 26. The limitations imposed should be established by the law and should not be applied in manner that would invalidate the rights guaranteed by article 18. The Committee observes that paragraph 3 of article 18 is of strict interpretation: restrictions are not allowed for reasons not specified, even if these would be allowed as restrictions of other rights protected by the Covenant, such as national security. The limitations can be applied only for the purposes described and must be directly related and proportionate to the specific needs they were provided for. Restrictions

39 NCCD's Decision no. 165 of 12.07.2010, reasoning drawn-up by Dezideriu Gergely, NCCD Steering Committee member.

cannot be imposed in discriminatory purposes or applied in a discriminatory manner". iile nu pot fi impuse în scopuri discriminatorii sau aplicate într-o manieră discriminatorie."

The Committee on Economic, Social and Cultural Rights in General Comment no. 18 adopted on 24 November 2005, regarding the Right to Labour stipulated in article 6 of the International Covenant on economic, social and cultural rights, in Chapter II, "The prescriptive content of the right to labour" specifies:„par.12. **The exercise of work in all its forms and at all levels** required the existence of the following essential and inter-related elements, implementation depending upon the conditions existing in each State Party: b) (i) article 2, par. 2 and article 3 of the Covenant (international regarding the economic, social and cultural rights n.n.) **prohibits any discrimination in the access and maintaining work** based on (…) **religion** (…) or any other statute, **which pursues or results in the restriction or hindering of the exercise of the right to labour, under equality conditions**. According to article 2 of the ILO Convention no. 111 (International Labour Organisation n.n.): The State parties should declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, **equality of** opportunity and **treatment** in respect of employment and occupation, **with a view to eliminating any discrimination in respect thereof**. Within the same General Comment, par. 33 specifies: "The non-discrimination principle mentioned in article 2, par. 2 of the Covenant has immediate application and is neither subject to progressive implementation, nor dependent on available resources. This principle is directly applicable to all aspects correlated to the right to labour (…)".

The Steering Committee sets down (…) that **the freedom of manifesting one's religion** or belief in worship, participation, practice or teaching **comprises a large range of acts.** The concept of worship extends to ritual and ceremonial practices, i**ncluding also the observance of holidays and rest days**. Similarly, the **Declaration on the elimination of all forms of intolerance and discrimination based on religion or belief** adopted through Resolution 36/55 of 25.11.1981 by the UN General Assembly stipulates in article 6 lett. h that: „(…)the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms: h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief". Also, in its case-law regarding the right to religion stipulated in article 9 of the European Convention of Human Rights, the **European Court of Human Rights** has settled that the practices and exercise of worships concern a certain religious behaviour expressed through the participation to processions and a certain religious behaviour, manifested through words or actions is related to the person's religious beliefs (ECHR, 25 May 1993, case Kokkinakis vs. Greece, Series A, no. 260-A, par. 31). The European Court settled that are protected by article 9 only those acts which are part of the practices of a religion or belief in a „generally recognized form" (ECHR, case C. v. United Kingdom, App. No. 10358 – 1983; case V v. Netherlands, App. No. 10678/1983, case Van Den Dungen v. Netherlands, App. no. 22838/1993; case CJ, JJ and EJ v. Poland, App, No. 23380/1994; case Serif v. Greece, 2001, 31 EHRR 20).

Considering the above grounds, (…), The Steering Committee ascertains that (…) the day (n.n), of Saturday constitutes, according to the principles of this cult, a days of religious rest and worship, starting from Friday evening at sunset, until Saturday evening at sundown. Thus (...) Saturday is devoted only for religious purposes, considering, according to the Bible, that within the understanding of this cult, no works related to worship should be performed in this day, except for force majeure situations. In this regard, the Steering Committee ascertains that the observance of the Sabbath (Saturday) is an integral part of the cult's religious practice, and of the petitioner's in her capacity of member of this cult and therefore a manifestation of the freedom of religion or belief guaranteed by article 18 of the Universal Declaration of Human Rights, article 18 of the International Covenant on civil and political rights and article 9 of the European Convention on Human Rights.

On the other hand, the Steering Committee sets down the fact that the International

Covenant on economic, social and cultural rights, ratified by Romania, stipulates in **article 7, lett. c** that: The States Parties (…) recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:…c) **Equal opportunity for everyone to be promoted in his employment to an appropriate higher level**, subject to no considerations other than those of seniority and competence.". Through article 2, par. 2 of the same Covenant: The States Parties (including Romania n.n.) undertake to guarantee that the **rights** enunciated in the present Covenant will be exercised without discrimination of any kind as to (…)religion or other status (…)". (**Excerpt of NCCD decision no. 350 of 19.12.2005, similar aspects in Decision no. 316 of 08.10.2007, Decision no. 382 of 23.06.2008, Decision no. 586 of 24.11.2009**[40]).

V. ARTICLE 4 OF DIRECTIVE 2000/78/EC
Transposition of the concept of specific occupational requirements. Interpretation of concept.

6.7. In the analysis of the notified aspects, the Committee acknowledges that Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, Directive 2000/43/EC of the Council of 29 June 2000 implementing the principle of equal treatment between persons, irrespective of racial or ethnic origin and Directive 2002/73/EC amending Council Directive 76/207/EEC of the Council on the implementation of the principle of equal treatment between men and women as regards access to employment, vocational training and promotion and working conditions, in art. 4 and art. 2 par. 6 stipulate that Member States may provide, as regards access to employment that „a difference of treatment which is based on a characteristic related to a characteristic related to racial or ethnic origin, religion or conviction, disability, age, sexual orientation and gender (n.n) shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate".

6.8. It is worth knowing that G.O. no. 137/2000, as amended by law no. 324/2006 transposed the provisions of Directives 2000/43/EC and 2000/78/EC. From this standpoint, the Ordinance stipulates in art. 9 that the provisions regarding contraventions in the field of employment and profession (art. 5 – art. 8) cannot be construed to restrict the right of an employer to refuse employing a person that does not fit the relevant occupational requirements, as long as the refusal is not a discrimination deed in the sense of this ordinance and such measures are objectively justified by a legitimate aim and the methods of attaining it are appropriate and necessary.

6.9. Thus, the requirement imposed by the respondent which is the subject of complaint in this case must also be analyzed referring to the provisions of art. 9 of G.O. no. 137/2000, republished. Or, from this standpoint, it is obvious that we stand in the field of access to employment and specific requirements for filling a position in direct sales. On the other hand, the Committee sets down that the requirement subject to analysis does not question a differentiation based on one of the discrimination grounds forbidden by Directives 2000/43/EC, 2000/78/EC or 2002/73/EC.

6.10. The European Court of Human Rights specified in its case-law that the „Contracting States have a certain margin of appreciation in order to determine whether and to what extent the differences between analogous or comparable situations could justify

40 Committee's Decision no. 350 of 19.12.2005, decision no. 316 of 08.10.2007, decision no. 383 of 23.06.2008, decision no. 586 of 24.11.2009, reasonings drawn-up by NCCD Steering Committee member Dezideriu Gergely.

the differences of legal treatment applied (see case Stubbings and others v. United Kingdom, par. 75). In the same regard, the European Court indicated that „the scope of the margin of appreciation will vary depending on circumstances, the matter in question and the context (case Lithgow v. United Kingdom, par. 122, 177, case Rassmussen v. Denmark, par. 40, case Inze v. Austria par. 41). For example, *in the context of differences based on gender, race, religion, legitimacy (child born beyond marriage) or sexual orientation,* the States' margin of appreciation is small (see case Abdulaziz v. United Kingdom, case Schuler-Zgraggem v. Switzerland, par. 67, case Burghartz v. Switzerland, par. 27, case Petrovic v. Austria, case East Asian Africans v. United Kingdom, case Cyprus v. Turkey, case Nachova v. Bulgaria, case. D.H. and others v. Czech Republic, case Gaygusuz v. Austria, case Inze v. Austria, case Hoffman v. Austria, case Canea Catholic Church v. Greece, case Salgueiro da Silva Mouta v. Portugal). On the other hand, in areas such as social policies, taxation and economic policy, national security or military policies, the States enjoy a *wide margin of appreciation* (see case Lindsay v. United Kingdom, case Wasa Liv Omsesidigt v. Sweden, case X. v. United Kingdom, case Szrabier and Clarke v. United Kingdom).

6.11. Thus, the question arises what are the consequences of assigning the case (the charged differentiated treatment) to the area of a ground forbidden expresis verbis by art. 2 par. 1 of G.O. no. 137/2000, republished and to a ground generically determined through the phrase „or any other criterion". The ground of the differentiation based on the graduation of an university with a Bachelor's degree or equivalent, specialization medicine does not fit any of the grounds enumerated by art. 2 par. 1. This fact, however, does not prejudice the case, given that the list of criteria is non-exhaustive, but the materialization of the specialization criterion in a specific field (medicine) accredits the assumption that the margin of appreciation of the differentiation in this case is wide compared to possible different treatments that would be applicable based on gender, racial or ethnic origin, religion, disability, age or sexual orientation, where the margin of appreciation is extremely limited and extremely strong grounds must be invoked to justify a differentiation based on such criteria (**Excerpt from NCCD Decision no. 125 of 07.07.2010, similarly decision no. 276 of 13.10.2010**[41]).

VI. ARTICLE 5 OF DIRECTIVE 2000/78/EC

Transposition of the concept of reasonable accommodation. Interpretation of concept. Reduction of normal working hours.

6.24. The Committee notes that the respondent invoked no justification regarding the impossibility of providing such part-time, only specifying that the store's organisational chart does not include part-time work places , 4 hours per day and that he is not in a position to provide such a place. In the same regard, the Committee notes that the respondent did not reject the petitioner's allegations that there are part-time working places in other working units, but also did not present any contrary element.

6.25. Or, in view of guaranteeing the observance of the principle of equal treatment of disabled persons, Directive 2000/78/EC provided the reasonable accommodation at the workplaces for such persons. In this case, the Steering Committee cannot set down that the justification of the respondent can be considered objective and reasonable or that the measure of providing such a norm fraction would have been a disproportionate burden for the employer, as long as he did not submit evidence in this regard, the allegations being mainly in the sense that termination by law of the contract prevailed under the given conditions.

6.26. Or, such allegations cannot be associated in the meaning of provisions of art.

41 Committee Decision no. 125 of 07.07.2010, decision no. 276 of 13.10.2010, reasonings drawn-up by NCCD Steering Committee member Dezideriu Gergely.

5 of Directive 2000/78/EC transposed in fact in national legislation in art. 5 point 4, art. 6 lett. c or art. 83 par.1 lett. b of Law no. 448/2006 on the protection and promotion of the rights of disabled persons, subsequently amended and supplemented, republished.

6.27. Thus, according to art. 5 point 4 of Law no. 448/2006, *reasonable accommodation* at the work place means „all changes made by the employer to facilitate the exercise of the right to labour of the disabled person; it involves changing the work program, purchasing equipment, devices and assistive technologies and other such measures”. According to art. 6 lett. c of Law no. 448/2006 „Disabled persons are entitled to: (...) (c)employment and *workplace adjustment*, guidance and professional conversion”. Also, according to art. 83 par. 1 lett. b of Law no. 448/2006 „The disabled persons seeking employment or *employed* are entitled to: (…) b) *reasonable accommodation* at the workplace”.

6.28. In considering all these reasons of fact and of law, the Committee considers that the notified aspects fall under the provisions of art. 2 par. 1 of G.O. no. 137/2000, on the prevention and sanctioning of all forms of discrimination, republished **(Excerpt from NCCD decision no. 463 of 02.09.2009**[42]).

Transposition of the concept of reasonable accommodation. Interpretation of concept. Change of work duties. Making the work space accessible.

6.1. The Committee sets down that in its case-law (among others NCCD Decision no. 463 of 02.09.2009) it acknowledged the provisions of Council Directive no. 2000/78/EC. According to art. 5 of Directive 2000/78/EC: „In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned”. 6.3. G.O. no. 137/2000 provides in particular, the transposition in the national law of the provisions of Directive 2000/78/EC.

6.4. In this case, NCCD’s Committee ascertains that although the respondent took actions knowing the situation of the petitioner, these were not able to provide a minimum level of accommodation at work. The whole complex of circumstances in which he worked and his particular situation led to the generation of an unwanted environment, with the obvious differences of the petitioner not taken into account with a view to ensuring opportunities of equal chances at work and making it accessible.

6.5. Referring to the situation of disabled persons, the European Committee for Social Rights has constantly settled that the human differences in a democratic society must be remedied with judgment in view of ensuring real and effective equality. Discrimination includes situations in which are not taken into account all relevant differences or when proper measures are not taken to ensure that the available rights and advantages are specifically available to all persons (see case Autism Europe v. France no. 13/2002, decision of 4.11.2003).

6.6. The Committee ascertains that the from the failure to adapt the duties to the work place or to reasonably establish new duties, so that current activities to be performed according to his disability, negative consequences arose.

6.7. Or, with the purpose of guaranteeing the observance of the equality of treatment principle for all disabled persons, Directive 2000/78/EC provides the reasonable accommodation at work for such persons. In this case, the Committee cannot set down that the accommodation measures would have been a disproportionate burden for the employer.

6.8. The provisions of Directive 2000/78/EC were transposed in national legislation through Law no. 448/2006 on the protection and promotion of the rights of disabled persons.

42 NCCD Decision no. 463 of 02.09.2009, reasoning drawn up by Dezideriu Gergely, NCCD Committee member.

Thus, according to art. 5 point 4 of Law no. 448/2006, *reasonable accommodation* at the work place means „all changes made by the employer to facilitate the exercise of the right to labour of the disabled person; it involves changing the work program, purchasing equipment, devices and assistive technologies and other such measures". According to art. 6 lett. c of Law no. 448/2006: „Disabled persons are entitled to: (...) (c) employment and *workplace adjustment*, guidance and professional conversion". Also, according to art. 83 par. 1 lett. c of Law no. 448/2006: „The disabled persons seeking employment or *employed* are entitled to: (..) b) *reasonable accommodation* at the workplace" (**Excerpt from NCCD's decision no. 665 of 26.11.2009**[43]).

Transposition of the concept of reasonable accommodation. Interpretation of concept. Supplementing examination time.

6.20. The Committee sets down that the respondent invoked in particular the norms regulating the profession of insolvency practitioner, i.e. the status and organisation law. He claimed the existence of uniform norms regulating the organization and conduct of competitions for admission to the profession, in fact starting from the assumption that regulations in the field generate a similar treatment for all persons in similar situations. But the equality principle requires not only that persons in similar situations should be treated similarly, but also persons in different situations have to be treated differently. The European Court of Justice stated the equality principle as one of the general principles of Community law. In the field of Community law, the equality principle **excludes the different treatment of comparable situations and the similar treatment of different situations, except when such a treatment is objectively justified** (see Sermide SpA v. Cassa Conguaglio Zucchero and others, Case 106/83. 1984 ECR 4209, par. 28; Koinopraxia Enoseon Georgikon Synetairismon Diacheir iseos Enchorion Proionton Syn PE (KYDEP) v. Council of the European Union and Commission of the European Communities, Case C-146/91, 1994 ECR I-4199; Case C-189/01 Jippes and others 2001 ECR I-5689, par. 129; Case C-149/96 Portugal vs. Council 1999 ECR I-8395 par. 91).

6.21. Or, under the different situations of persons suffering from certain disabilities, the European legislator has regulated the concept of reasonable accommodation. This is stipulated in art. 5 of Directive 2000/78/EC and it involves: "appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned". It must not be ignored that according to art. 3 of Directive 2000/78/EC, the Directive also applies to the affiliation to an organisation whose members carry on a particular profession. The Romanian legislator transposed the concept of reasonable accommodation in Law no. 448 of 6 December 2006 regarding the protection and promotion of the rights of disabled persons. According to art. 5 of Law no. 448/2006, republished, adjustment means „the transformation of the physical and informational environment, of products or systems, to make them available also for disabled persons" and reasonable accommodation at work means: „all changes made by the employer to facilitate the exercise of the right to labour of the disabled person; it involves changing the work program, purchasing equipment, devices and assistive technologies and other such measures". Through G.O. no. 137/2000, republished which transposes Directive 2000/78/EC the Romanian legislator has regulated the prohibition of all forms of discrimination, including that based on disability (impairment) concerning access to employment.

6.22. Under such conditions, the case subject to settling by the Committee calls into question the hypothesis of different treatment applied to persons in different situations,

43 NCCD Decision no. 665 of 26.11.2009, reasoning drawn up by Dezideriu Gergely, NCCD Steering Committee member.

the candidates for the exam of joining the profession in relation to those persons (candidate), among which the petitioner, who suffers from a certain disability. As regards the situation of these person with a disability (including the petitioner), by addressing the additional request of examination time correlated to his medical situation, is questioned the concept of reasonable accommodation to the particular case of the petitioner. His request represents in fact a call for appropriate adjustment according to the particular specific need to a concrete situation (i.e. the exam). Thus, the question arises if the required accommodation (providing additional time) is a disproportionate burden for the respondent. 6.23 The Committee sets down that the reasons of the respondent are related to the lack of regulations derogating from the rules of organisation of the competition, but considers that this reasoning, with an apparently neutral nature, led to disadvantaging the petitioner, because of his medical situation, within the meaning of art. 2 par. 3 of G.O. no. 137/2000. **(Excerpt from NCCD Decision no. 126 of 07.07.2010**[44]).

Transposition of the concept of reasonable accommodation. Interpretation of concept. Examination commission.

The petitioner's request of having organised a separate commission for the examination is legitimate and does not breach the provisions of art. 16 of the Constitution. (...). We consider that in such situation affirmative measures can be taken for certain categories of persons and as for persons of certain ethnicities or nationalities affirmative measures are taken, so can be applied to disabled persons.

Art. 2 par. 8 of G.O. no. 137/2000 stipulates expressly the settlement of special measures, including affirmative ones in order to protect disadvantaged persons. (...) Emergency Ordinance no. 102/19999 on the protection and employment of disabled persons (...) indicated in art. 44 that "persons with severe, accentuated or average disability (...) are entitled (...) to special protection: a) they may hold, according to the law and their training, physical and intellectual capacity any position in the employer's organisational chart. The employers are obliged to arrange the workplace, in order to eliminate all obstacles to the activity conducted (**Excerpt from NCCD Decision no. 362 of 17.12.2004, similarly NCCD Decision no. 276 of 25.10.2005**).

VII. ARTICLE 7 OF DIRECTIVE 2000/78/EC

Positive action and specific measures. Providing benefits when establishing pension. DISABILITY

7.6. (...) The Steering Committee has regard to Decision no. 565 of 25 October 2005 regarding the unconstitutionality exception of the provisions of art. 47 par. (1) lett. b) of Law no. 19/2000 on the public system of pensions and other social insurance rights, published in the Official Gazette no. 1.052 of 25 November 2005.

7.7. Thus, the Constitutional Court, with regard to the provisions of art. 47, sets down that the section of law subject to constitutionality control has regard only to the pension right of disabled persons, **establishing their right to a pension for old age, with the benefit of reducing the contributory period and the pensioning age, being a favourable regulation, corresponding to each category of persons stipulated in art. 47**. Therefore the Court finds that „the criticized law section does not infringe the constitutional principle that enshrines the equality of rights and allows establishing a differentiated legal treatment, as long as the situations considered are objectively different".

7.8. The Steering Committee sets down that this consideration is based on the principle of substantial equality, which refers to categories of persons placed in different

44 NCCD Decision no. 126 of 07.07.2010, reasoning drawn-up by NCCD Committee member, Dezideriu Gergely

situation, to which a different treatment should be applied. This settlement is also held by the European Court of Human Rights, which underlines that **the equality principle excludes the different treatment of comparable situations and the similar treatment of different situations, except when the treatment is objectively justified** (see par. 7.2.). In the same regard, the Constitutional Court set down the equality principle in relation to the situation regulated through art. 47 of Law no. 19/2000.

7.9. The Steering Committee has regard to the fact that substantial equality falls under the notion of equality of results and equality of opportunities, the first assuming that the result of treatment in question should be equal and the latter suggesting that the law may provide that all persons should benefit from the same opportunities, given that people have different starting positions, thus providing equal opportunities, but not equal results.

7.10. Thus, the equality of results recognizes that apparently the identical treatment may generate an inequality in practice due to past or ongoing discrimination or to differences in the access to resources, which determines that within this notion the effects and the purpose of a measure may prevail in terms of the result which must be equal with regard to persons who are subject to the measure in question and are in different situations. …

7.12. Or, in relation to the content of the text of law, we set down that the legislator **establishes a benefit for a specific category of persons**, namely insured persons who reached a contributory period under a **pre-existing disability status** and **blind insured**. These persons benefit from **reduced contributory period and of the standard** retirement **ages** with 15 years and 10 years, irrespective of age, if they have reached at least a third, two thirds of the complete contributory period or the complete contributory period.

7.13. Thus, we set down that for the categories expressly provided by the law and under the stipulated conditions, the standard retirement age and contributory periods are reduced, which unequivocally establishes a benefit, a different measure in relation to the category of persons who are not in the situation of those enumerated in art. 47, but which is **objectively justified by the different situation** of the latter, through the **existence of the disability condition** and of the **blind person** condition (**Excerpt from NCCD Decision no. 218 of 01.08.2007, Decision no. 464 of 17.12.2007**[45]).

VIII. ARTICLE 9 OF DIRECTIVE 2000/78/EC

The capacity to pursue the proceedings in discrimination cases. Defence of rights. Interpretation.

According to art. 5 of the internal procedure, „The petitioner is the person deeming himself to be discriminated and who notifies the Council regarding the perpetration of a discrimination deed against him". According to art. 7 par. 1 and par. 2 of the internal procedure „(1) The concerned person is either the person who deems himself to be discriminated and who notifies the Council regarding the perpetration of a discrimination deed against him or one of the persons provided in art. 8 par. (1) and (2) or other persons who have a legitimate interest in combating discrimination and who represent a person, a group of persons or a community against which a discrimination deed was perpetrated. (2) The persons who do not have the exercise of their rights can be a party if they are represented, assisted or authorized according to the law".

According to art. 28 par. 1 and 2 of G.O. no. 137/2000, republished and to art. 8 of the internal procedure: „(1) Non-governmental organisations which are aimed at protecting human rights or have a legitimate interest in combating discrimination have a capacity to stand

45 NCCD Decision no. 218 of 01.08.2007, Decision no. 464 of 17.12.2007, reasonings drawn-up by NCCD Committee member, Dezideriu Gergely

the proceedings in case discrimination occurs in their field of activity and offends a community or a group of persons. (2) The organisations stipulates in par. (1) have a capacity to stand the proceedings also when discrimination offends an individual, upon the latter's request (...)”.

Referring to the provisions of G.O. no. 137/2000, republished, the Committee re-states that within the meaning of provisions of art. 20 par. 1 “**The person who deems himself to be discriminated** may notify the Council”. Therefore, the legislator establishes in the benefit of persons who deem themselves to be discriminated the right to an action for ascertaining and contraventionally sanctioning a discrimination by NCCD. Art. 20 par. 6 of G.O. no. 137/2000, republished, in terms of procedural obligations stipulates that “**The concerned person is obliged** to prove the existence of deeds allowing to assume the existence of a direct or indirect discrimination and **the person against whom the notification is filed has** to prove that the deeds are not discrimination”.

Unlike art. 20 par. 1 of G.O. no. 137/2000, republished, where the legislator uses the phrase „the person who deems himself to be discriminated” in art. 20 par. 6 is included the phrase „concerned person”. In order to fully understand the content of this term, we must refer to the provisions of art. 28 par. 1 and par. 2 of G.O. no. 137/2000, republished, in which the legislator refers to the capacity to stand the proceedings of non-governmental organisations which are aimed at defending human rights or have a legitimate interest in combating discrimination. It thus follows, that in the field of non-discrimination, the capacity to stand the proceedings belongs firstly to the person who deems himself to be discriminated and secondly and equally to non-governmental organisations, under the provisions stipulated by the legislator.

This meaning is fully rendered in the Internal procedures for settling complaints before NCCD, which defines, in art. 8 the concerned person: „either the person who deems himself to be discriminated and who notifies the Council regarding the perpetration of a discrimination deed against him, or one of the persons provided by art. 8 par. (1) and (2) (n.n. non-governmental organisations) or other persons who have a legitimate interest in combating discrimination and represent a person, a group of persons or a community against which a discrimination deed was perpetrated”.

Article 8 of the procedure shows the intention of comprising several categories of persons who can address a claim to NCCD , but under specific conditions. Firstly, the person who deems himself to be discriminated (art. 20 par. 1 of G.O. no. 137/2000), non-governmental organisations (art. 28 par. 1 and par. 2 of G.O. no. 137/2000) and other persons who have a legitimate interest and represent a person against whom a discrimination deed was perpetrated. Therefore, the procedure establishes the possibility that a third category of persons notify NCCD. These are other persons than non-governmental organisations, but who have a legitimate interest in combating discrimination, persons who represent an individual who was discriminated, a group or a community of discriminated persons. In its case-law, this last category was represented by unions, trade unions or confederations which applied to the Council on behalf of the members. Equally, in this category fell the relatives of persons who were discriminated and who applied to the Council on behalf of the family member in question (...) (**Excerpt from Decision no. 76 of 02.06.2010**[46]).

IX. ARTICLE 10 OF DIRECTIVE 2000/78/EC
Burden of proof. Interpretation of concept. Reference points from the case-law of the European Court of Justice.

6.18. In relation to the principle of reversing the burden of proof in the field of non-discrimination, stipulated in art. 20 par. 6 of G.O. no. 137/2000, republished, as it set down

46 *NCCD Decision no. 76 of 02.06.2010, reasoning drawn-up by NCCD Committee member, Dezideriu Gergely*

in its case-law (see Decision no. 180 of 17.07.2007, Decision no. 440 of 30.07.2008, Decision no. 292 of 14.05.2009 and others), the Committee specified that according to this principle, the concerned person, in our case the petitioner, must show sufficient elements which allow to presume the existence of a discrimination. These elements can be considered means of evidence supporting the existence of a different treatment (exclusion, restriction, preference, distinction) applied to the petitioner directly or indirectly, but it must be specified that in relation to the provisions of art. 20 par. 6, the obligation incumbent upon the petitioner is „to prove the existence of deeds", which places us in the field of the general principle of the burden of proof incumbent upon the petitioner to prove deeds, but, as an exception, the legislator establishes „deeds allowing to presume the existence of direct or indirect discrimination", as defined by G.O. no. 137/2000, republished. This aspect requires from the procedural point of view the obligation of the petitioner in supporting his/her allegations of proving the existence of a deed likely to give rise to a presumption of different treatment. At this point, the person against whom the notification was filed has the burden to prove that the deeds are not discrimination. Or, in this respect, it can be undoubtedly ascertained that it results an exception from common law as regards the burden of proof, since it is not incumbent upon the petitioner to prove the failure to justify the differentiated treatment (distinction, exclusion, restriction, preference).

6.19. Of course, it must be underlined that it is not required to prove a negative fact, but a concrete positive one tightly related to an objective and reasonable justification. In the absence of an explanation „of innocence" which could overthrow the presumption that a forbidden criterion underlay the different treatment, a jurisdiction or another competent court is entitled to ascertain the existence of a discrimination. The application of the principle of reversal of the burden of proof is similarly contextualized by the European Court of Justice which shows, that if the person who deems himself discriminated would establish a *de facto* situation which would allow to presume the existence of a direct discrimination, the effective enforcement of the principle of equal treatment would then require that the burden of proof be incumbent on the person accused of discrimination, who should prove that there was no breach of the mentioned principle. In this context, the respondent (defendant) could dispute the existence of such a breach, establishing by any legal means especially that the treatment applied to the person who deems discriminated is justified by objective factors, beyond any discrimination based on a prohibited ground (See in the same regard the case-law of the European Court of Justice, case Bilka Kaufhaus, par.31; case C-33/89 Kowalska [1990] ECR I-2591, par. 16; case C-184/89 Nimz [1991] ECR I-297 par. 15; case C-109/88 Danfoss [1989] ECR 3199, par. 16; case C-127/92, Enderby [1993] ECR 673 par. 16).

6.20. In the case S.Coleman v. Attridge Law, Steve Law as well as in the case Centrum voor gelijkheid van kansen en voor racismebestrijding v. Firma Feryin NV, the European Court of Justice showed that, according to the principle of the reversal of the burden of proof, the respondent has the obligation to establish before the national court a situation de facto allowing to presume the existence of a direct discrimination based on one of the prohibited criteria. Adapting the rules on the burden of proof is required as soon as there is a presumption of discrimination. If the claimant would establish a situation de facto allowing to presume the existence of a direct discrimination against him, the effective enforcement of the principle of equal treatment would then require that the burden of proof should be incumbent on the respondents in the main action, which should prove the fact that there was no breach of the mentioned principle. In this context, the respondents could dispute the existence of such a breach, establishing by any legal means especially that the applied treatment is justified by objective factors and beyond any discrimination on one of the prohibited grounds (see the European Court of Justice, case S. Coleman, ECJ, C-303/06, judgment of 17 July 2008, case Centrum voor gelijkheid van kansen en voor racismebestrijding v. Firma Feryn NV, C-54/07, judgment of 10 July 2008).

6.21. In the case S.Coleman v. Attridge Law, Steve Law, the European Court of Justice settled that the same rules regarding the burden of proof also apply to harassment, given that this is a discrimination form. The European Court set down: „Consequently, as it results from paragraph 54 of this judgment, according to art. 10 (1) of Directive 2000/78 and ground 32, the rules regarding the burden of proof should be adapted in the situations in which there is a discrimination case prima facie. If the claimant (n.n.) established facts presuming that there has been a harassment, the effective enforcement of the equality principle requires that the burden of proof be incumbent upon the respondent, who should prove that there was no harassment in the case" (see the European Court of Justice, case S.Coleman v. Attridge Law, Steve Law, 17 July 2008) **(Excerpt from NCCD Decision no. 511 of 29.10.2009)[47].**

X. ARTICLE 11 OF DIRECTIVE 2000/78/EC

Victimisation. Interpretation of concept.

7.14. In the system of the Romanian Constitution, justice is one of the guarantees of effective exercise of citizens' rights and freedoms. This role is motivated through the position of judicial authorities in the system of state power and their functions. The principle of free access to justice applies irrespective of the capacity of the protected person and allows access to justice to defend any right or freedom and any legitimate interest, regardless if they result from the Constitution or from other laws. Also, no law can restrict the exercise of this right (see Ioan Muraru, Elena Simina Tanasescu, Constitutional law and political institutions, Ist volume, 9th edition, All Beck Publishing House). The Constitutional Court of Romania has settled that the free access to justice also requires access to the procedural means by which justice is administered. Within the grounds of the same judgment, was set down that the meaning of art. 21 par. (2) of the Constitution, according to which access to justice cannot be restricted by any law is that no category or social group can be excluded from the exercise of procedural rights it established (See Judgment no. 204/2000, Off. Gazette no. 46/2001, CDH 2001, page 146).

7.15. Corroborating the aspects held to the subject of the complaint, as filed, the Steering Committee refers to the provisions of art. 2 par. 7 of G.O. no. 137/2000, subsequently amended and supplemented, republished. According to art. 2 par. 7 " According to this ordinance, any adverse treatment as a reaction to a complaint or to any legal proceedings in relation to the infringement of the equal treatment or of the non-discrimination principle constitutes victimisation and shall be contraventionally punished".

7.16. Victimisation represents a form of discrimination introduced by the Romanian legislator in transposing the provisions of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, published in the Official Journal of the European Communities (OJEC) no. L180 of 19 July 20000 and the provisions of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, published in the Official Journal of the European Communities (OJEC) no. L303 of 2 December 2000.

7.17. In this regard, we set down that in the field of non-discrimination legislation, as the acquis communautaire is transposed, in order to have a discrimination deed, its constitutive elements must be cumulatively met. Thus, the victimisation deed occurs through an adverse treatment, which may take different forms. The wording of the text includes the phrase "adverse treatment" applied to a person, but the text of art. 2 par. 7 does not define expresis verbis the adverse treatment. The phrase "any treatment" indicates the intention of the legislator of comprising a large range of behaviours and not a restrictive one, which allow retaining different classifications in practice, which may vary from case to case, but

47 NCCD Decision no. 511 of 29.10.2009, reasoning drawn-up by NCCD Committee member, Dezideriu Gergely

which are limited to the adverse or contrary nature. In this regard, several factors must be taken into account, together or separately: the context in which the charged deed occurred, the duration of the „treatment" applied, its effects and consequences on the person who suffered them, etc.

7.18. The purpose or cause of the adverse treatment is determined by filing a complaint, notification or court action. Thus, the act causing the perpetration of the victimisation deed is the initiation of an administrative or judicial procedure, by filing a complaint or a court action, which assumes the existence of a causal link, in the absence of which victimisation cannot be held.

7.19. In relation to the provisions of art. 2 par. 7 of G.O. no. 137/2000, republished we set down that the adverse treatment occurs as a reaction to a complaint or court action regarding the infringement of the principle of equal treatment and of non-discrimination. The initiation of the judicial or administrative procedure by filing a complaint or a court action is conditional upon claiming the infringement of equal treatment and of non-discrimination. This constitutive element of victimisation assumes that the complaint or court actions which determined the adverse treatment should have had as subject the infringement of the equality principle and of non-discrimination. The lack of stating the equality and non-discrimination principle results in the impossibility of setting down a victimisation deed. The manifestation of the contrary or adverse treatment against the initiator, which may take the form of either a single subsequent action or of several concomitant actions directed against him is determined, for victimization by the preliminary claiming within administrative and judicial procedures of the previous infringement of the principle of equality and non-discrimination (**Excerpt from NCCD Decision no. 436 of 28.11.2007**[48]).

XI. ARTICLE 13 OF DIRECTIVE 2000/43/EC

NCCD's capacity of delivering points of view, opinions and recommendations. Interpretation.

The Steering Committee considers that in the specific area of non-discrimination, the National Council for Combating Discrimination can adopt points of view, representing opinions with guiding nature, which are not legally binding on the application of the non-discrimination principle. This activity must be understood pursuant to the specific role fulfilled by the National Council for Combating Discrimination and to the special provisions comprised by G.O. no. 137/2000, republished and within the meaning of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, published in the Official Journal of the European Communities (OJEC) no. L180 of 19 July 2000, of Recommendation no. 2 of the European Commission against Racism and Intolerance (within the Council of Europe) on specialised bodies to combat racism. xenophobia, anti-Semitism and intolerance at national level and Recommendation no. 7 on national legislation to combat racism and racial discrimination as well as the Resolution of the General Assembly of the Organisation of United Nations no. 48/134 on national institutions for the promotion and protection of human rights.

Thus, according to Directive of the Council of the European Union 2000/43/EC, Chapter III, art. 13 "Member States shall designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin (…)". According to par. 2 of art. 13 "Member States shall ensure that the competences of these bodies include: (…)making recommendations on any issue relating to such discrimination".

According to General Recommendation no. 2 of the European Commission against

48 *Committee Decision no. 436 of 28.11.2007, reasoning drawn-up by Dezideriu Gergely, NCCD Committee member.*

Racism and Intolerance, Chapter C, lett, i, the specialised bodies must have among their functions also issuing „advice on standards of anti-discriminatory practice in specific areas" and according to General Recommendation no. 7 on national legislation to combat racism and racial discrimination, Chapter V, Common provisions, par. 25 „the competence of the specialized body must include the right to monitor legislation and to provide advice to legislative and executive authorities". In this regard, the Explanatory Memorandum of the Recommendation indicated in par. 53 that „the specialised national body must hold the competence to formulate recommendations to the executive and legislative authorities on improving legislation, regulations and practice".

According to the Resolution of the UN General Assembly no. 48/134 on national institutions for the promotion and protection of human rights, Chapter Competence and responsibilities, point 3, lett. a i) and lett. b), the national institution must have competence, inter alia, to "issue opinions, recommendations, proposals and reports on any matter concerning the promotion and protection of human rights".

According to the Steering Committee, the special provisions established especially at the level of the European Union and of the Council of Europe and United Nations Organisation, in the area of specialised institutions in the area of human rights and especially in the field of non-discrimination have been received by the Romanian legislator through law no. 324/2006 amending and supplementing Government Ordinance no. 137/2000, published in the Official Gazette of Romania, Part I, no. 626 of 20 July 2006 which transposes the provisions of Council Directive 2000/43/EC implementing the principle of equal treatment between persons, irrespective of racial or ethnic origin, published in the Official Journal of the European Communities (OJEC) no. L180 of 19 July 2000 and the provisions of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, published in the Official Journal of the European Communities (OJEC) no. L303 of 2 December 2000.

According to art. 16 of G.O. no. 137/2000, republished: The National Council for Combating Discrimination, hereinafter named the *Council* is the state authority in the field of discrimination, autonomous, with legal personality, being under parliamentary control and at the same time *a guarantor of the observance and enforcement of the non-discrimination principle, according to internal legislation in force and to international documents to which Romania is a party".* According to art. 18 par. 1 "The Council is responsible for enforcing and controlling the observance of the provisions of this law in its field of activity, *as well as for harmonizing the provisions of regulations or administrative acts that infringe the non-discrimination principle*" . And according to art. 19 (1) In view of combating discrimination deeds, the National Council for Combating Discrimination exercises its powers in the following fields: a) prevention of discrimination deeds; b) mediation of discrimination deeds; c) investigating, ascertaining and sanctioning of discrimination deeds; d) monitoring of discrimination cases; e) granting of specialized assistance to the victims of discrimination".

Or, in the corroborated interpretation of the provisions of art. 16, art. 18 and art. 19 of G.O. no. 137/2000, republished, the Steering Committee considers that, lato sensu, the National Council for Combating Discrimination has powers which can justify the formulation of points of view, opinions or recommendation, with guiding nature, which are not legally binding, limited within the analysis of the non-discrimination principle. (**Excerpt from Decision no. 310 of 14.05.2008**[49]).

NCCD's capacity to issue recommendations. Legal force. Consequences.

6.10. It is beyond any doubt that in the specific field of non-discrimination, the Committee may issue recommendations to public or private institutions, legal and natural persons who have a certain role, at a certain point in relation to the principle of equal treatment. From this stand point, the Internal procedure for settling petitions and notifications

49 *Committee Decision no. 310 of 14.05.2008, reasoning drawn-up by Dezideriu Gergely, NCCD Committee member.*

before NCCD, published in the Official Gazette no. 348 of 6 May 2008 stipulates in art. 79 that, through the decision adopted, the Committee may settle to include a recommendation with guiding nature, which is not legally binding, in order to prevent infringement of the principle of non-discrimination.

6.11. The administrative courts called to settle on the legality of decisions adopted by the Committee of the National Court for Combating Discrimination have constantly ruled that „the recommendations of the National Council for Combating Discrimination have no legal relevance, constituting guidelines for public institutions which have a legitimate interest in the implementation of the principle of equal opportunities" (See, for example, Civil Sentence no. 467 of 28.02.2006 of the Court of Appeal Bucharest).

6.12. As it ensues from the procedure for settling complaints and from the rulings of courts, the legal nature of NCCD recommendations is that of a guiding regulation, which requires the idea of a behaviour or action that the institution recommends to the subject in question. Or, these guidelines are not legally binding and cannot be seen as acts incorporating rights.

6.13. This finding does not deprive the National Council for Combating Discrimination of its substance, given that the role of the Committee is to settle notifications on discrimination deeds and to take specific measures for ascertaining the existence of discrimination. Pursuant to art. 20 par. 1 of G.O. no. 137/2000, the concerned person has the right to action for ascertaining and sanctioning a discrimination deed. The initiation of this act triggers a special procedure which is finalized through the adoption of an administrative-jurisdictional act which can ascertain and contraventionally sanction the person who perpetrated the discrimination deed (See Constitutional Court, Judgment no. 444 of 31 March 2009, in the same regard Judgment no. 1.096 of 15 October 2008). Or, this fact occurred through the adoption of the judgment quoted in the given case.

6.14. The circumstance that the act adopted by the Committee of the National Council for Combating Discrimination, i.e. Judgment no. 77 of 03.02.2009 was not attacked by the parties to the administrative court, under the provisions of art. 20 par. 10 of G.O. no. 137/2000, republished does not change the legal nature of point 3 of the judgment. In this context, the opinion of the Committee is that indeed, the Committee's decision which are not attacked within the 15 days term are a writ of execution by law, but this factual circumstance regards the contraventional side of the ascertained deeds and especially the contraventional sanctioning. Or, the premise provided by par. 10 of art. 20 of G.O. no. 137/2000 effected in this case, by not attacking the decision of the Committee cannot affect ipso jure a guiding regulation, which, by its nature, is not legally binding. This circumstance consequently causes the impossibility of the Committee to rule over an aspect related to the non-execution of a recommendation comprised in Judgment no. 77 of 03.02.2009. ...

6.16. It should be noted that this aspect of the case does not either harm the discriminated person, given that the legislator, beyond the possibility of initiating an administrative-jurisdictional procedure, pursuant to art. 27 par. 1 and par. 2 of G.O. no. 137/2000, regulates the right of the person who deems himself discriminated to file before the court a request for damages and reinstatement of the situation previous to discrimination or annulment of the situation created through discrimination, within 3 years from the date of deed perpetration or from the date when the interest person could acknowledge it (*See The Constitutional Court, Judgment no. 1.011 of 8 November 2007*).

6.17. Thus, beyond the ascertainment of the discrimination deed set down in Decision no. 77 of 03.02.2009, the Committee considers that the aspects notified in this case exceed the powers of the Committee of the National Council for Combating Discrimination, being correlated to the granting of an effective remedy, which is an exclusive feature of courts (**Excerpt from NCCD Decision no. 419 of 18.08.2009**[50]).

50 *NCCD Decision no. 419 of 18.08.2009, reasoning drawn up by Dezideriu Gergely, NCCD Committee member.*

CHAPTER V

PREVENTION OF DISCRIMINATION FORMS UNDER DIRECTIVE 2000/78/EC

I. POLICY OF PREVENTION OF ALL DISCRIMINATION FORMS

1. The national plan and strategy implementing measures to prevent and combat discrimination (2002—2013)

The policy to prevent all discrimination forms developed by the National Council for Combating Discrimination is substantially based on the National strategy implementing measures to prevent and combat discrimination and in the concrete actions, on the motion and development of the whole society, by sliding between national and international non-governmental framework and the Romanian and European institutional framework, in order to fulfill four major objectives: inclusion, promotion of equality, recognition and assertion of the diversity principle, information, awareness and education in view of preventing prejudices and discrimination.

The National Council for Combating Discrimination, since its setting up in 2002, has organised and conducted programs, projects, courses, national and regional campaigns in order to inform, raise awareness and educate the population in general and certain socio-professional groups in particular, with a view to respecting the values of diversity, tolerance and all human rights.

In order to fulfill its objectives during 2002-2006, the National Council for Combating Discrimination conducted prevention activities based on a *National Action Plan to Combat Discrimination*. This was developed following the establishment of the *National Alliance against Discrimination*, as a result of the identification of specific issues by the non-governmental organisations in the field of human rights and which are active in certain sectoral areas or represent the interests of certain groups vulnerable to the discrimination phenomenon. Basically, the National Action Plan to Combat Discrimination was the starting point in the field of combating discrimination and has been permanently improved until 2004, when it was approved through Government Decision and published in the Official Gazette.

However, with the clarification of the independence status of the institution, through the approval of Law no. 324/2006 and reallocation from being subordinated to the Government to the Parliament's control, there has been a need to act strategically, in a structured, integrated and targeted manner. In this regard, was developed the *National strategy implementing measures to prevent and combat discrimination* (2007-2013) in consultation with non-governmental organisations active in the field. The strategy was adopted by the Steering Committee, approved through Order to NCCD President no. 286/2007 and published in the Official Gazette no. 6 of 3 October 2007.

2. Programs to prevent discrimination under the criteria provided by Directive 2000/78/EC

2003

In 2003, the activity of preventing the discrimination phenomenon conducted by the National Council for Combating Discrimination involved the following main action lines:

A. National Alliance against Discrimination (N.A.A.D.)

In 2003 was established the National Alliance against Discrimination, conceived as a forum for debate open to all non-governmental organisations and trade unions, with the purpose of supporting the activity of preventing discrimination deeds conducted by the National Council for Combating Discrimination.

NAAD operated during 2003-2005 and it gathered a total number of 80 non-governmental organisations, which met regularly within round tables in their field of activity in view of identifying concrete measures to promote equality and combat discrimination. Thus, in 2003 were set up 11 round tables as follows: young people; elders; refugees and asylum-seekers; gender; disabilities; race, nationality and language; ethnicity; sexual orientation; HIV/AIDS, social category and social origin; religion and convictions.

B. The National Action Plan to Combat Discrimination 2003 – 2006

The National Action Plan to Combat Discrimination represented a set of measures aimed at ensuring the observance of the principles of equality and non-discrimination. The plan was developed taking into account the suggestions received from representatives of civil society, N.A.A.D. members. The plan represented a document of public policies aimed at establishing some lines of action in the field of preventing and combating discrimination.

The plan measures aimed at:

- disseminating information on equality of opportunity;
- promoting tolerance and diversity;
- giving a sense of responsibility to public institutions, civil society and private employers in view of preventing and combating acts and deeds of discrimination;
- achieving a national coherent system to prevent discrimination;
- combating discrimination deeds through the enforcement of the law and prompt formal intervention.

Besides the main lines of action, the Council was engaged in the organisation and participation in a series of seminars, actions and campaigns in the field of human rights:

C. “Human rights and combating discrimination” – seminar organised by the Council in partnership with the Commission on Human Rights, Cults and National Minorities Issued of the Chamber of Deputies;

D. „Give a chance! Give yourself a chance!” – campaign for public information regarding the proper formulation and editing of classified ads regarding the organisation of competitions for filling a position and their publishing.

2004

In August 2004, was approved the **National Action Plan to Combat Discrimination through G.D. 1258/2004 published in the Official Gazette no. 775/2004**. According to the

general Objectives of National Action Plan to Combat Discrimination and the Prevention Policy, the Council conducted the following programs:

The program of information and documentation in preventing and combating discrimination: „Information campaign on combating discrimination in District 3" – project organised in partnership with the City Hall of District 3 of Bucharest which aimed to ensure a climate of tolerance and safety among the members of the community of District 3.

The education program in the field of non-discrimination, rights and fundamental freedoms: Festival of diversity – DiversFest – event organised by NCCD together with a series of non-governmental organisations NAAD members and the Department for Inter-Ethnic Relations in the Romanian Government, the National Authority for Youth, Ministry of Culture and Cults, Press Monitoring Agency - Academia Catavencu, National Romanian Commission for UNESCO. The project was the first initiative of this type in Romania that promoted diversity and tolerance and was supported by the History Museum of Bucharest and Friedrich Cultural Centre.

In the same year, the **National Council for Combating Discrimination concluded cooperation agreements with the Ministry of Administration and Interior and the National Institute of Magistracy** in view of including in the curricula of students topics regarding prevention and combating of discrimination, following to be held a session for the National Institute for Magistracy and 4 sessions for the Ministry of Administration and Interior.

2005

In 2005, the prevention activities conducted by NCCD pursued to attain the overall objectives of the National Plan of Action to Combat Discrimination through the following programs:

The education program on non-discrimination, of rights and fundamental freedoms:

The „diversFEST2005" festival – project developed in collaboration with the Department for Inter-ethnic Relation and National Authority for Youth, with support from the National Organisation „Romanian Scouts" and Alliance for Unity of Roma.

Training program for anti-discrimination mediators 2005 -2007

The training of *anti-discrimination mediators* was initiated by the *National Council for Combating Discrimination* in the autumn of 2005, within an campaign of information and promotion of non-discrimination within District 2 of Bucharest, in collaboration with the City Hall of District 2. About 40 persons were trained in 2005. The training continued in 2006 in Bucharest, at the request of the Ministry of Justice – Probation Department and in Timisoara – in partnership with Intercultural Institute Timisoara. The training in Galati followed – a collaboration with *Danubius* University, then Resita – having the City Hall of Resita as partner. All campaigns were conducted at the request of future beneficiaries. About 250 persons were trained in 2006. The year 2007 began with the training of a group active next to Penal Reform International (a mixed group of Romanians and Bulgarians), it continued at the *Vasile Goldis* University in Arad and then the Drivers' Trade Union *Speranta* in RATB (Autonomous Administration of Transport Bucharest) and in Gorj county (for the first time the traditional Roma communities in partnership with the *Roma Community* Association). Courses were also conducted in Alba county, at Cultural Centre Alba-Iulia, in partnership with the *Group for Diversity Analysis* and in Galati, having as partner *Danubius* University. Other conferences followed in Baia Mare (in partnership with *Esperando* Association) and Iasi, having as partner *Pro Women* Foundation.

2006

According to the National Action Plan to Combat Discrimination 2003-2006, the Council's prevention activities were based on raising awareness on the issues and negative impact of discrimination on vulnerable groups by conducting the following programs:

Education program on non-discrimination, of rights and fundamental freedoms:

„**Caravan of diversity**” – project conducted in partnership with the Department for Inter-Ethnic Relations of the Romanian Government that involved the organisation of seminars and school competitions on the topic of human diversity in the following cities: Constanta, Suceava, Cluj, Timisoara, Caras-Severin and Bucharest.

Summer school „Intercultural dialogue” – organised by the National Authority for Youth in partnership with the Department for Inter-Ethnic Relations and the National Council for Combating Discrimination, which aimed at accustoming youth with the cultural peculiarities of national minorities.

„All different – all equal” – summer school organised in partnership with the National Authority for Youth and Department for Inter-Ethnic Relations. Its goal was to increase participation in the social life of young people at risk of social integration coming from disadvantaged categories.

2007

In 2007, the Steering Committee of the National Council for Combating Discrimination adopted the National strategy implementing measures to prevent and combat discrimination (2007-2013), approved through Order to NCCD's President no. 286/2007, published in the Official Gazette no. 6 of 3 October 2007. The programs to prevent discrimination pursued the objectives settled in the Strategy.

Objective 3 – Ensuring equality of access, participation and results as regards public and private services designed for the public. ART. 16 – Promoting equality in education.

The National Council for Combating Discrimination together with Christian University Dimitrie Cantemir, League for Defence of Human Rights and Ministry of Education and Research conducted during February - April the campaign of awareness and prevention of discrimination **“We are equal! Let's be friends!”** in which students were acquainted with the importance of the non-discrimination principle and of respect for human rights.

The project „Youth say NO to discrimination”, conducted during March – May was organised by the National Council for Combating Discrimination in partnership with Pro Democracy Association – Regional Center of Resources Focsani, with the purpose of promoting among high-school pupils in Vrancea county a tolerant behaviour towards various vulnerable groups (on grounds of: ethnicity, disability, gender, religion, sexual orientation, age and HIV/AIDS).

„Diversity Olympics” were conducted in Galati, in September and pursued to inform on the aesthetics of diversity, to increase public awareness of the target group regarding the taking on of a pro diversity behaviour, to train in order to transmit received information and apply it in own activities. *The main objective* was to organize specific activities for the promotion of diversity in this environment: the first edition of the diversity Club (will take place monthly, with guests from the academic environment), the seminar „The academic environment faced with diversity”, competitions diversity Olympics (How can I make known

my ethnic group, literary essays - Know me better, I am different, but your equal; Colour spots, presentation of various ethnic groups which are the colour spots of Romania, of the European Union, etc); The World in which I want to live! (it is drawn a symbolic border - with young people placed in a certain form, trying to make a symbolic change for the better of the place in which they want to live – a symbolic representative drawing, a message, a song, a poem, a movie, etc).

Priority 4.1. Consolidating anti-discrimination initiatives at national level and conducting programs of inter-cultural awareness on diversity and non-discrimination

„Combating religious discrimination. Inter-confessional tolerance", project conducted during July – August 2007, over three sessions: in Cozia locality – Valcea county, Gresu locality – Vrancea county, Constanta locality – Constanta county. Each session was attended by about 40 persons, representatives of the Romanian Orthodox Church, non-governmental organisations, local officials, NCCD representatives. The objective of the project was to facilitate understanding of the relationship between respecting religious rights of individuals and representatives of public institutions in order to prevent discrimination deeds based on religious option.

„**Carnival of diversity**" conducted in Resita locality, Caras-Severin county pursued to promote and shape attitudes to different opinions, with a view to mutual openness and solidarity, to activate public opinion and civic engagement to act in favour of tolerance promotion and education for tolerance, recognition of the principles of tolerance as a necessity for a sustainable social, economic and community development. The project activities consisted of masks parade downtown, exhibition of traditional costumes/ customs, contests adapted to persons with disabilities, exhibition of costumes and masks made by children (pupils and students), concerts, folk dances, the parade of costumes of national minorities, awarding a prize to the most beautiful mask, to the most inspired costume, cooking of traditional food, exhibition of beverages.

Priority 5.1 – Promotion of initiatives to inform citizens in view of raising awareness on the effects of discrimination in all aspects of social life

Within the campaign to prevent and combat discrimination on the labour market, the National Council for Combating Discrimination was a partner in the project **„It's your chance to get involved, for a labour market without discrimination"** financed by the Netherlands Embassy in Bucharest and the Center Partnership for Equality with funding from Open Society Foundation.

On the 10th of December, the International Day of Human Rights, the National Council for Combating Discrimination in partnership with ACCEPT Association, the Press Monitoring Agency, the Center of Curriculum Development and Gender Studies FILIA, the Center of Legal Resources, Foundation for poetry „Mircea Dinescu, the Institute for Public Policies, Roma ACCESS, Romani CRISS and Equal Opportunities organised the debate "**The year 2007: between the observance of the principle of equal treatment and discrimination**", with the purpose of reviewing the situation of human rights in 2007. The debates within this meeting focused on issues of equal treatment and discrimination – the legislative framework, implementation; monitoring of observance of human rights for institutionalized persons with disabilities – stigma and mental health, human rights and discrimination of sexual minorities in Romania, infringement of the right to housing and education of the Roma community, freedom of expression and press manipulation, equal opportunities between men and women: daily issues and institutionalization, the situation of prevention and combating of discrimination in the Year of Equal Opportunities for All in Romania.

During the months September – October within the campaign named „**Equality of opportunities for all**”, the National Council for Combating Discrimination at the invitation of the Association „Viitorul Tinerilor” attended a series of debates on the topics of „Discrimination”, „Equal opportunities”, „Volunteering” in the high schools of Prahova. At the same time were made available instructive materials prepared by NCCD. Other partners involved in this project were the County School Inspectorate Prahova, the Office of Counseling for Citizens - Ploiesti, the Agency for Equal Opportunities and National Agency for Youth.

To celebrate 5 years since the setting up of the National Council for Combating Discrimination, during 10-12 September were conducted a series of events such as: organisation of round tables and debates (working groups) between non-governmental organisations, bodies of central government and NCCD, the re-organisation and launching of the new website of NCCD, editing of a NCCD brochure, carrying out and launching of the first number of NCCD's magazine "ProDiversity".

Priority 5.2 – Consolidating the education of citizens in the field of non-discrimination through formal and non-formal educational processes:

The seminar of professional training of magistrates in the field of legislation on preventing and combating discrimination, organised by the National Council for Combating Discrimination, with support from the National Institute of Magistracy, Center for Legal Resources and Romani CRISS organisation.

The National Council for Combating Discrimination participated in the activities organized in each edition of Gayfest from 2007 to 2010.

2008

Under the umbrella of the European Year of Intercultural Dialogue, the National Council for Combating Discrimination organised, at the beginning of July 2008, in Mangalia courses of training and information on non-discrimination within a summer school. The sessions were attended by 50 participants – students, graduates, MA students from various faculties in Bucharest and in the country, as well as representatives of organisations of national minorities. The general objectives of the event were to accustom participants with the non-discrimination field, with that of defence of human rights, promotion of inter-cultural values and inform them regarding the powers and competences of the National Council for Combating Discrimination.

The prevention activities of the Council pursued the observance of the guidelines with the objectives and priorities established within the National Strategy implementing measures to prevent and combat discrimination (NSIMPC) 2007 – 2013:

Priority 1.4 – Consolidating cooperation in the field of combating discrimination with other competent institutions at national and international level:

NCCD in collaboration with the Foundation „Youth for Youth” and National School of Public Health and Health Management organised the round table „**Equality of opportunities in the health system in Romania**”, to which were invited 50 representatives with various medical specialties, experts in the field of discrimination and health in order to identify issues related to discrimination in this sector, with the purpose of preventing possible future discrimination actions. Thus, within the meeting were presented aspects related to discrimination issues in general and aspects of the health system (especially those related to HIV-AIDS and TB) in order to define intervention priorities in the prevention and mitigation of this phenomenon.

Objective 3 – Ensuring the equality of access, participation and results as regards the public and private services designed for the public, art. 16 – Promoting equality in the field of education:

The project Education for diversity had as general objective to train teachers regarding the importance of the application of the non-discrimination principle and respect for diversity in education; to disseminate information and train teachers as regards the importance of the application of Order 1529/July 2007 of the Ministry of Education, Research and Youth regarding the development of the diversity issues in the national Curriculum. The specific objectives of the project were: to increase the interest of teachers for the diversity issues; support in the development of curricula in the context of diversity; prevention of stereotypes and prejudices among the youth of the next generation; prevention of intolerant and discriminatory attitudes among young people; knowing the daily issues of groups vulnerable to discrimination; reduction of the level of intolerance and discrimination in schools.

"School without discrimination", a project conducted over several years, namely 2008, 2009, 2010 aimed at promoting education for diversity in school and pre-school education in Romania.

Priority 5.2 - Consolidating the education of citizens on non-discrimination through educational formal and non-formal processes

„**Young people versus discrimination**" – project conducted by NCCD in collaboration with the Romanian Association for Debates, Oratory and Rhetoric (ARDOR) and Roma Center for Social Intervention and Studies ROMANI CRISS. The project included the organisation of 30 public debates which aimed at activating high-school pupils and involving them in debates and changes of policies on topics such as acceptance of Roma, of persons infected with HIV/ AIDS, of sexual minorities.

„**Promotion of intercultural dialogue among young people**" – summer school having as target group students, faculty graduates, MA students from various faculties in Bucharest and in the country and representatives of the organisations of national minorities. The general objectives of the event were to accustom participants with the field of non-discrimination, with that of defence of human rights, to promote intercultural values and inform them with regard to the powers and competences of the National Council for Combating Discrimination.

Priority 5.4 – Monitoring and investigating the discrimination phenomenon in Romania, identifying the extent of the event, the action lines and necessary measures and initiatives in preventing all forms of discrimination:

Speak-out Against Discrimination" – a campaign of the Council of Europe launched in Romania by the Information Office of the Council of Europe Bucharest in collaboration with the National Council for Combating Discrimination and the National Audiovisual Council. The campaign was aimed at informing the public regarding the meaning of the discrimination notion (definition of discrimination in the Protocol no. 12 to the European Convention on Human Rights) and mechanisms to combat it; to convince parliamentarians to use Principle no. 1 of the Committee of Ministers, Recommendation no. R (97) regarding "hatred in speech"; to support the mass-media professionals to be better trained in reporting discrimination and promoting cultural diversity.

„**Improving the management of discrimination cases within the courts of justice**" – project financed with European funds through the PROGRESS program, which involved

magistrates (judges and prosecutors) and was organised as six specialized training courses. Within these training sessions the students and the other participants (NCCD, National Institute for Magistracy and civil society representatives) had the opportunity to study thoroughly and debate topics such as: national and European legislation in the field of non-discrimination, ECHR and national case-law, but also case-law of the National Council for Combating Discrimination, powers and competences of the institution, administrative and judicial procedures.

Information campaign in partnership with Distrigaz Sud, for the company employees. This was conducted in the training centers of the company Distrigaz Sud (Bucharest, Craiova, Pitesti, Galati, Buzau, Fagaras, Brasov, Covasna, Ploiesti and Targoviste) and the courses were attended by employees from all centers of the company. This campaign was aimed at informing the personnel of Distrigaz Sud (which was faced in the past with discrimination cases sanctioned by NCCD) on basic notions of discrimination, so that, in the event of future discrimination cases, the personnel notify cases internally, to their own specialized departments. At the same time it was aimed to prevent discrimination cases which may occur in the activity conducted by Distrigaz employees in the field, in public relations, but also within interaction among colleagues.

„**Confidentiality - Rights – Non-discrimination**”, campaign which resulted in the good practices guide „Power and life. Beside people with HIV”. This was carried out following the partnership between NCCD and the Association „Noi si Ceilalti”, Prahova branch. The objective of the project was improve information and raise awareness of the representatives of institutions that come in contact with HIV infected people most often and where most discrimination cases occur or cases of breach of the confidentiality of the diagnosis. Therefore, the project beneficiaries were teachers and medical staff, but also officials from the departments of social assistance.

2009

According to the National Strategy implementing measures to prevent and combat discrimination (NSIMPCD) 2007 – 2013, in 2009 the National Council for Combating Discrimination conducted the following prevention activities:

Priority 1.4 – Consolidating cooperation in the field of combating discrimination with other relevant institutions, at national and international level:

„**We want. We can. We succeed**”, project having as general objective the training of teachers regarding the importance of the application of the non-discrimination principle and of the respect for diversity in education; dissemination of information and training of teachers on the importance of the application of Order 1529/July 2007 of the Minister of Education, Research and Youth regarding the development of the issues of diversity in the national Curriculum. The specific objectives of the project were to enhance the interest of teachers for the issues of diversity; to grant support in the development of curricula in the context of diversity; to prevent stereotypes and prejudices among the young people of the next generation; the prevent intolerant and discriminatory attitudes among young people; to know daily issues of groups vulnerable to discrimination; to reduce intolerance and discrimination in schools.

Objective 3 – Ensuring equality of access, participation and results regarding the public and private services designed for the public. Art. 16 – Promoting equality in the field of education:

The project „Discrimination in education” had as general objective to train teachers, aiming to ensure a European future for pupils, equal chances of assertion and to actively

involve the institution in the life of the community by introducing the European dimension, promoting local values and being aware of the need to continually improve the quality of education, by creating a permanent partnership: pupils - school – parents – local community, referring to the European standards.

Priority 5.2 – Consolidating the education of citizens in the field of non-discrimination through formal and non-formal educational processes:

The camp of ethnic minorities in Romania ALTERIS 2009 – NCCD in partnership with Alteris Association and the Department for Inter-Ethnic Relations within the General Secretariat of the Government organised in the Recreation Center Padureni, Covasna county, during 13 -18 July 2009 the second edition of the Camp of Ethnic Minorities in Romania Alteris 2009. The purpose of the camp was to promote culture and intercultural dialogue, ethnic, cultural and religious diversity, to increase public awareness of relevant actors in view of developing amicable inter-ethnic, inter-confessional relations.

2010

OBJECTIVE 3 Ensuring equality of access, participation and results as regards public and private services designed for the public, art. 15 – Promoting equality in the field of health.

"**Treatment without discrimination**" – project conducted in partnership with the Association for Development and Social Inclusion, Health post-secondary school Slobozia; Health post-secondary school Tulcea; Health post-secondary school Craiova; Health post-secondary school Petrosani; Health post-secondary school Baia Mare had as target group pupils of post-secondary schools for nurses and pharmacists and consisted in the organisation of information and training courses.

Priority 5.2 – Consolidating the education of citizens in the field of non-discrimination through educational formal and non-formal processes:

„**Young people debate**" – project conducted in partnership by NCCD, Agency of Community Development „Impreuna", MEYS, ARDOR, Policy Center for Roma and Minorities, DIR, NAR, NAEO, Roma Education Fund. Within the project were organised debates at county/ regional/national level which aimed to correctly inform, debate with arguments and increase public awareness on various forms in which social, ethnic, economic, health or gender differences may constitute barriers in communication and tolerance.

„**Children talk about discrimination and their rights**" – project conducted in Bucharest, Constanta and Tuzla having as beneficiaries pupils and teachers of middle school and high-school, which consisted in open hours during in which were discussed discrimination, what it means to be different, where discrimination occurs, types, etc.Within the project the pupils developed drawings and/or collages on the topic of equal opportunities.

„**Stop discrimination in high-schools 2010**" – project conducted in Iasi in partnership with Petre Andrei University, with the high schools from Iasi which was intended for pupils of high-schools, psychologists, social workers, sociologists and school counselors. The project consisted of a campaign of raising awareness in the high-schools in Iasi and a national conference on the topic of discrimination.

„We have the same rights"- project conducted in partnership with Nevo Parudimos Association, in Resita and had as beneficiaries teachers, students, high school pupils, community policemen.

„**School without discrimination III – Training of trainers**” – project conducted in partnership with the Ministry of Education, Research, Youth and Sport in Drobeta Turnu-Severin, Sibiu, Calarasi, Tulcea, Miercurea-Ciuc, Bistrita having as target group directors and teachers from the Teaching Staff Resource Center.

„National campaign „The difficulty of being yourself” conducted in Bucharest and Sibiu and had as general objective to inform pupils, students, teachers, journalists and public authorities regarding discrimination forms.

„Am I different? I am talented!”project which pursued to make known and understood by young people, doctors, nurses, psychologists, the issues of non-discrimination, the concept of equal opportunities, to make known and promote children's rights, to understand certain situations which constitute discrimination deeds.

II. ACTIONS OF COLLABORATION WITH NON-GOVERNMENTAL ORGANIZATIONS IN THE NON-DISCRIMINATION FIELD

1. Actions of public consultation with non-governmental organizations

The National Council for Combating Discrimination has collaborated with non-governmental organisations with powers in promoting and protecting human rights, attempting to improve legislation and the Romanian institutional framework, but also to promote information campaigns or common projects.

In 2003 was established the National Alliance Against Discrimination, conceived as a forum of debate open to all non-governmental organisations and trade-unions, in view of supporting the activity of discrimination deeds prevention conducted by the National Council for Combating Discrimination. NAAD operated during 2003 – 2005 and it gathered a total number of 80 non-governmental organisations which have met regularly within round tables (on the following criteria: young people; elders; refugees and asylum-seekers; gender; disabilities; race, nationality and language; ethnic origin; sexual orientation; HIV/AIDS, social category and social origin; religion and convictions) within their field of activity in view of identifying concrete measures to promote equality and combat discrimination.

In 2006, the National Council for Combating Discrimination has publicly debated the project of the National Strategy implementing measures to prevent and combat discrimination (2007 – 2013). The debate was organised at the Parliament House, with the participation of the following non-governmental organisations: ACCEPT Association, Together Agency, Civic Alliance of Roma, ARCA, Center of Partnership for Equality, CRCR, Center for Legal Resources, FILIA Center, Open Society Foundation, UNOPA, Roma Party, ANPH, Pro Democratia Association, Pro Europa League, LADO, Blind People Association, Intercultural Institute Timisoara, Group for Initiatives, Studies and Social Analyses Sebes.

2. Actions of partnership with non-governmental organizations

The development, organisation and implementation of certain projects to prevent

discrimination in different social environments was often done in collaboration with non-governmental organisations. This public-private partnership led to a better understanding of the institution's activity by the non-governmental organisations, of certain organisational or financial aspects, to better results. Among the organisations with which NCCD conducted actions, following the conclusion of a cooperation protocol, we remind:

- project *„Festival of cultural diversity – CULTFEST 2006*";
- *Intercultural Institute Timisoara* through the *„Information and training campaign to combat discrimination*" 2006;
- *British Council* for the *European Year of Intercultural Dialogue*"
- *Association of Law Students* through the organisation of information-educational activities;
- *Christian University Dimitrie Cantemir* through the project *„We are equal! Let's be friends! Equality and non-discrimination";*
- *Intelship Romania Association* through the project *„Youngster informed, hard to discriminate*";
- *Petre Andrei University Iasi* through *„Stop discrimination in high-schools 2010";*
- *One World Romania Association* through *„International festival of documentary film dedicated to human rights – One World Romania 2010*";
- *Down Syndrome Association* through the project *„Celebration of the International Day of the Down Syndrome*";
- *Youth Theater „Metropolis"* through the project *„Known violence, unseenviolence*";
- *Romanian Humanist Association and Divers Etica Association* through the project *„The difficulty of being yourself*";
- *Accept Association, Press Monitoring Agency, Center for Curriculum Development and Gender Studies Filia, Center of Legal Resources, the Poetry Foundation Mircea Dinescu, Institute for Public Policies, Roma Access, Romani Criss and Equal Opportunities* through the organisation of the debate *„Year 2007: between the observance of the principle of equal treatment and discrimination";*
- *Family and Child Protection Foundation* through the organisation of the competition *„Draw me a right*!";
- *Partnership for Equality Center and Open Society Foundation* through the project *„It is your chance to get involved for a labour market without discrimination";*
- *Association for Integrative Services – AIS* through the project *„I am different. I am talented!";*
- *Center of Assistance for Sustainable Development of Human Resources* through the project *„PhotoVoice Eu-Du-US";*
- *Association for Promoting Diversity and Equal Opportunities* in collaboration with the City Hall Resita, through the organisation of the *„Carnival of Diversity*";
- *Future of Youth Association* through the organisation of debates on discrimination in the high-schools of Prahova county.

Collaboration with non-governmental organisations is achieved constantly and through the communication of information that some NGO's request to the Council in relation to the activity of settling complaints and ascertaining discrimination. The Center of Legal Resources requested relevant information from NCCD, having regard to its position of RAXEN National Focal Point in Romania.

NCCD was the partner of the *Press Monitoring Agency* in the project „Cyber Hate Watch” submitted within the Financial Mechanism of European Economic Space – Fund for Non-governmental organisations round II. The project aimed at promoting actions of self-help and representation of the interests of socially excluded groups and implementation of anti-discrimination policies.

NCCD is a partner of the Giacomo Brodolini Foundation Italy within the project conducted by the Center of Legal Resources „*Multi-regional network of anti-discrimination counseling services for the social inclusion of discriminated persons*”. The project aims to improve the equal access to the labour market of women and persons belonging to vulnerable groups. The specific objectives are to increase accessibility of services promoting the principle of equal opportunities and gender equality in the Romanian society and especially on the labour market by setting up a network of local anti-discrimination centers, increasing the public awareness of issues of equal rights on the labour market, in the field of labour legislation and of overcoming cultural stereotypes, including sexual harassment at work, improvement of competences and skills in the field of equal opportunities and gender equality of managers and personnel employed by central and local authorities, social partners and organisations of the civil society, of experts and mass-media operators.

III. PUBLIC'S PERCEPTION REGARDING THE DISCRIMINATION PHENOMENON IN ROMANIA

1. Comparative analysis of surveys requested by the National Council for Combating Discrimination

To assess the perception of the public to the issue of non-discrimination, NCCD ordered from time to time the carrying out of surveys (barometers).

- NCCD/Metro Media Transilvania – „Opinion barometer regarding Discrimination in Romania” (2004);
- NCCD/CURS Center of Urban and Regional Sociology – „Perceptions and attitudes to the discrimination phenomenon: (2005);
- NCCD/Gallup – „Perceptions and attitudes of the Romanian population to the discrimination phenomenon” (2008);
- NCCD/INSOMAR – „The discrimination phenomenon in Romania” (2009);
- NCCD/TOTEM Communication – „The discrimination phenomenon in Romania” (2010).

The analysis is focused on the issue of exclusion from the labour market, professional discrimination, including the categories mentioned in the text of the framework Directive (age, disability, sexual orientation, religion or convictions), noting that other areas relevant for certain comparisons between the mentioned categories may occur. The perception of discrimination on the Romanian labour market was reflected in surveys to the extent one of the mentioned categories came to public attention also through other fields of social life and especially if they were subject of mass-media reports.

The labour market proves to be a good detector of the cleavage of social relations, especially when going through a period of restrictive economic measures. Analyzing the polls,

it is noted that old persons have become the target of social exclusion, in an increasingly narrow labour field.

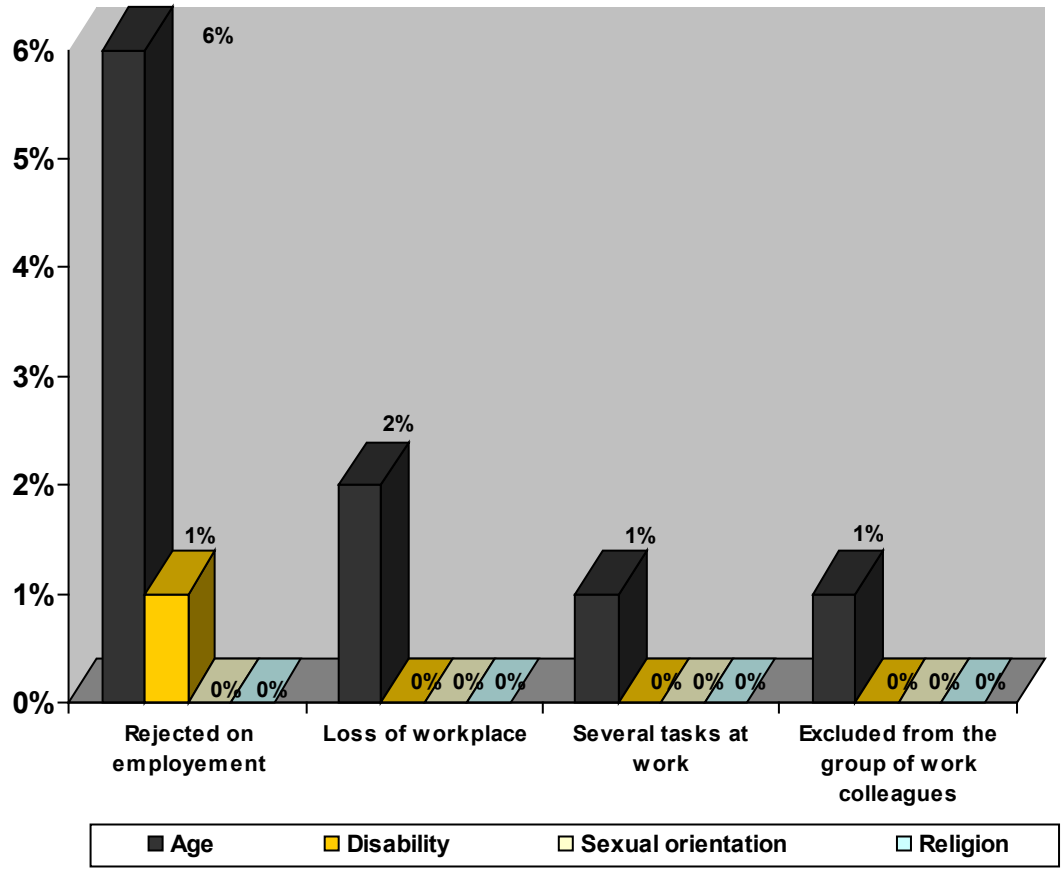
In 2010, among those interviewed, 90% agreed that Romania's problems are related to work places. In this context, 78.4% are aware that a person eliminated from employment because he/she is old is a discrimination case. However, since 2004, 57% of persons interviewed agreed that „there are too many young people without a job, thus they should be preferred to elders on employment".

Discrimination against the elders takes place in many fields of social life, in a constant process and in the work place the lack of tolerance registers variable rates, without notable peaks or descents. Instead, regarding the field of employment, the percentage is high and rising, the most visible soar being registered between 2004 – 2005. In the 2004 survey, to the question „How often do you think a situation of discrimination against elders is found on employment", 57 answered yes and in 2005, the number of those who believed that this situation is often found soared to 74%.

It should be noted that with the deterioration of social relations, the category of old persons is also perceived at the level of family relations as a category with an increased level of vulnerability, in relation to the other categories accessing the labour market, namely disabled persons, persons with a different sexual orientation or a different religion.

Thus, at personal level or one of the family members of those asked were in a situation of „not being employed", „being dismissed from work", „receiving more tasks at work", „being excluded from the group of work colleagues" more often because they were old persons.

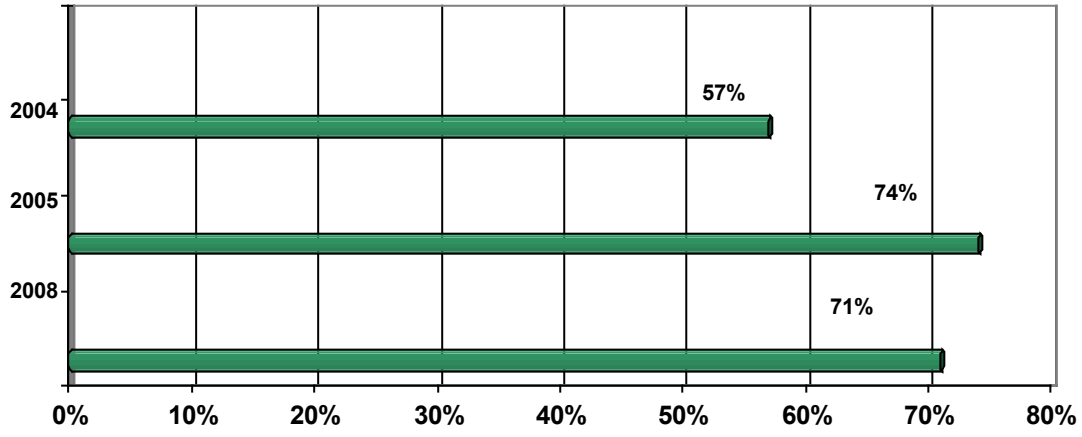
The degree of rejection of old persons compared to the other categories in the field of labour



The analysis of contexts favouring discrimination emphasized that the field of labour is considered one in which differentiated treatments take place „very often” or „often”, especially regarding access to employment (47%), the exercise of an occupation (41%) and elders rank first among the categories subject to discrimination.

The data show how often we find in Romania the situation in which a person could not be employed because he/she is old. Compared to the other criteria or without stating a comparative situation, most of those asked indicated the elders as most often rejected on employment: 2004 – 57%; 2005 – 74%; 2008 – 71%.

How often occurs the situation in which a person shall not be employed because he/she is old?

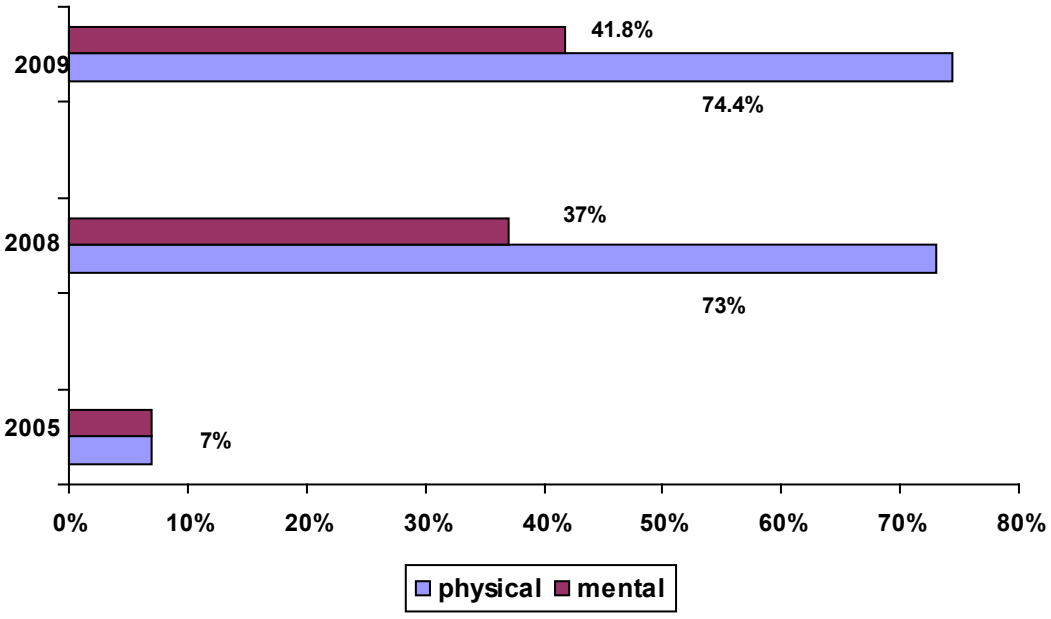


The statistics from 2004 show that 40% of survey respondents agreed that disabled persons are unable to conduct an activity without help. In 2008, 94% say that the state should provide proper social protection and 19% do not prefer to have as work colleague a disabled person and 49% prefer not to work together with a person with a mental disability, the conclusion of the same survey being that 38% of the respondents see those with a disability as very often in the situation of being treated differently at work.

Persons with disabilities are perceived to be discriminated mainly in the relation with employers, in accessing public places (including schools) and in the relation with authorities. The attitude towards persons with a disability varies by type of disability.

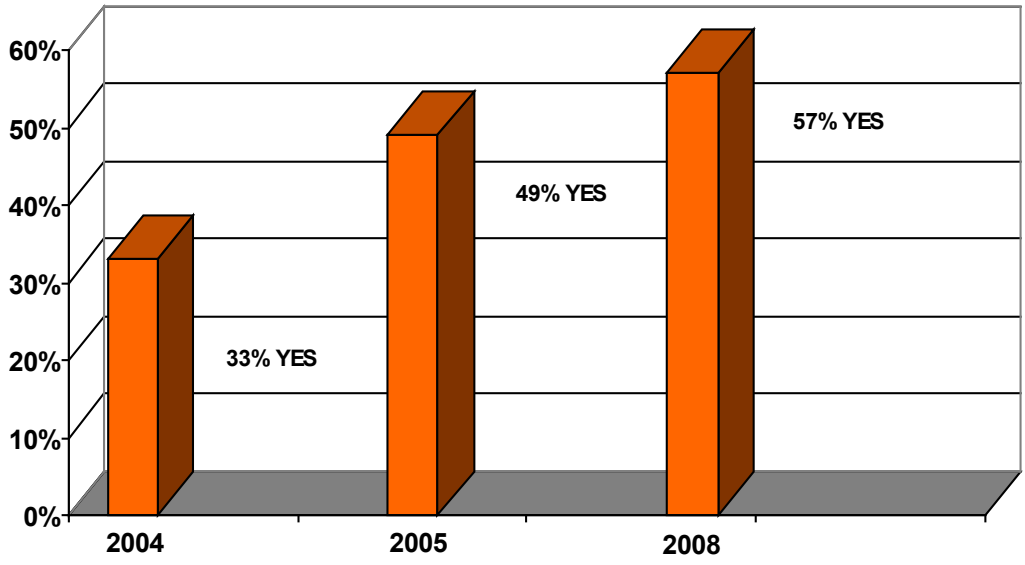
Thus, the social distance towards people with a physical disability proves to be smaller than for mental disability. Even in 2005, the number of those who agreed to have as work colleagues persons with a physical disability was equal to that of those who accepted to have colleagues with a mental disability (7%), during 2008 and 2009 the level of acceptance of persons with a mental disability was smaller than the level of acceptance of persons with a physical disability (2008 – 73% for physical disability and 37% for mental disability; 2009 – 74.4% for physical disability and 41.8% for mental disability), even if overall the percentage of those who accept at the work place colleagues with a certain type of disability has increased.

Degree of acceptance depending on the type of disability



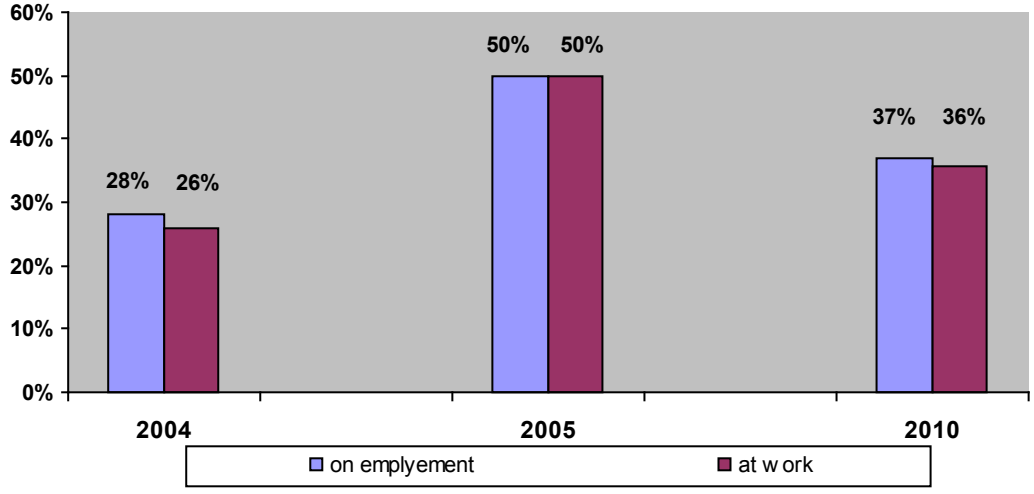
The statistics show that a category registered a higher labour market exclusion, as it was more perceived and shaped as a homogenous group. In 2004, when the representatives of the LGBT community and their actions started to be publicized, but they did not have yet an image of a visible group, with respected rights, to the question „would you mind having as work colleagues persons with a homosexual orientation", 33% answered YES. In 2005, to the same question, 49% answered YES. In 2008, just after Romania joined the EU, when the public awareness spotted the gay community as a socially recognized group, supported by the Community bodies, the number of those who „minded having as work colleagues homosexuals" increased to 57%. The trend is reflected in the 2010 barometer, in which a third of those interviewed think that the discrimination of gay persons has increased after the integration of our country in EU.

Would you mind having as work colleagues persons with a homosexual orientation?



A person suffers to a large extent because he/she is part of a minority group with a different sexual orientation, both on employment and at work, in relations with bosses or colleagues: 2004 – 28% on employment, 26% at work; 2005 – 50% on employment, 50% - at work; 2010 – 37% on employment, 36% at work.

The degree of rejection on employment and at work of persons with a different sexual orientation



At the same level of training, persons with a different sexual orientation manage to access a work place by 57% harder than heterosexual persons.

An interesting situation occurs after entry into employment, showing a reversal of how persons with a different sexual orientation are treated compared to elders and disabled persons.

In 2004, of the three categories, persons with a different sexual orientation were the worst treated (12%) and the other two were rated with equal percentages (elders 11%, disabled persons 11%). In 2008, the figures show that persons with a different sexual orientation were considered to be best treated, registering only 17%, compared to elders who reached the percentage of 40% and disabled persons, who were seen as victims of a different treatment by 31% of the respondents.

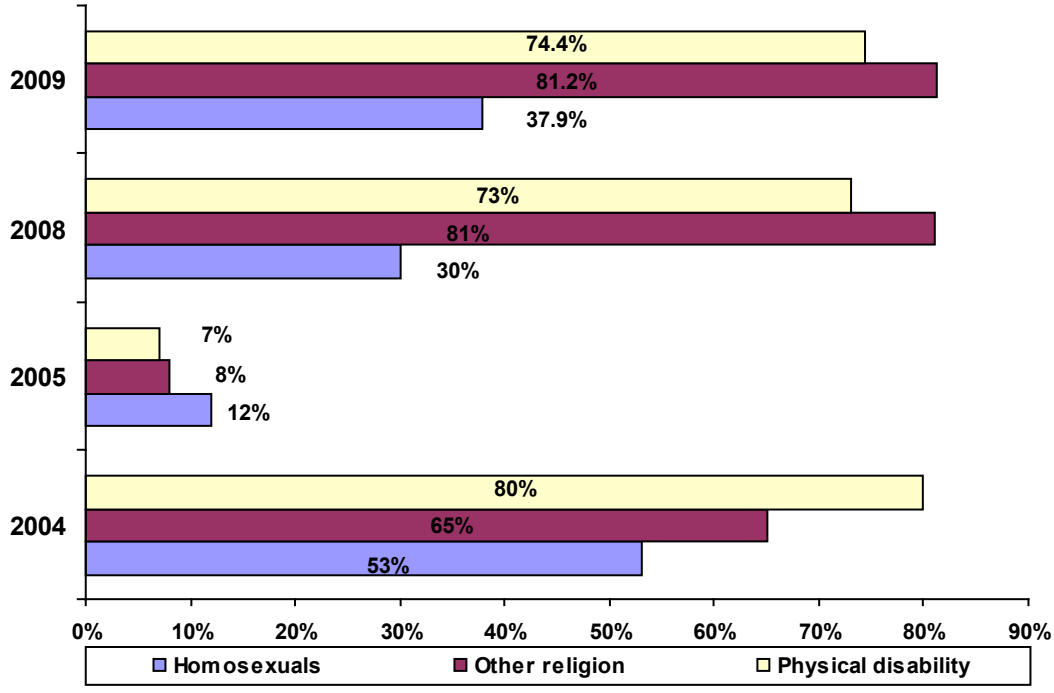
It should be noted that persons belonging to the gay community are perceived as carrying HIV/AIDS, this association between homosexuality and this scourge explaining to a certain extent the lack of acceptance and social distance towards this category.

Beyond the context of social relations, 74% would not want to have as close friends gay persons and 58% would be against having them as neighbours. The social distance to the sexual minorities is greater in case of older people (over 45 years), in the rural environment and in the case of persons with lower levels of education. Also, for all the socio-demographic categories is noted that the acceptance increases when it comes to social interactions with more formalism, compared with interactions with persons from the entourage, namely friends or relatives.

To the extent the gay persons are perceived in Romania also from the perspective of a “religious fault”, the measurement of their acceptance compared to persons with

a different religious orientation shows a stronger rejection. Also compared to other categories, such as disabled persons, it results a greater rejection also for persons with a different sexual orientation: "Do you agree to have as work colleague a gay person, a person with a different religion or a person with a physical disability?". The respondents expressed their agreement: 2004 – sexual orientation 53%, religion 65%, physical disability 80%; 2005 – sexual orientation 12%, religion 8%, physical disability 7%; 2008 – sexual orientation 30%, religion 81%, physical disability 73%; 2009 – sexual orientation 37.9%, religion 81.2%, physical disability 74.4%.

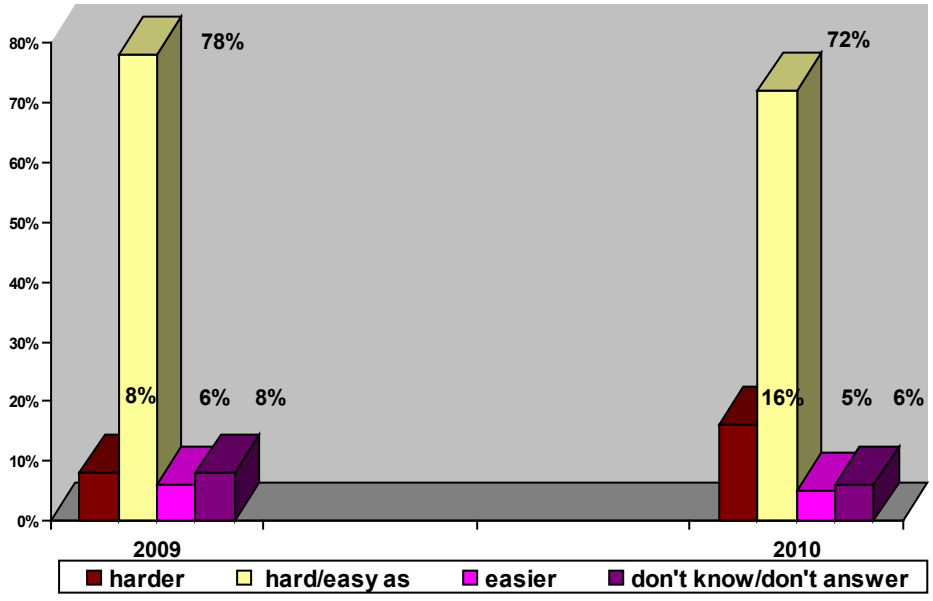
Do you agree to have as work colleague a gay person, a person with a different religion or with a physical disability?



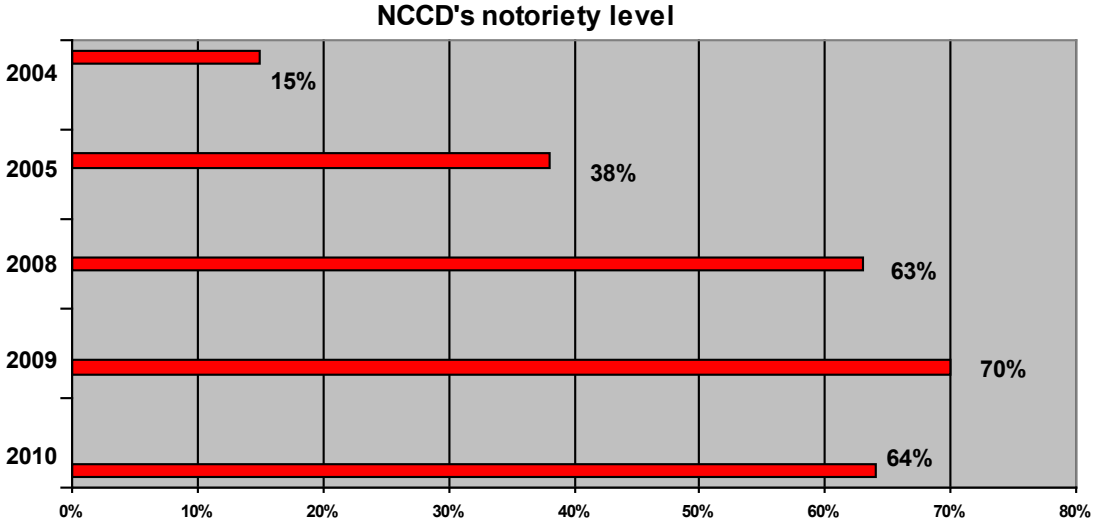
In Romania, the perception on persons who practice a different religion than the Orthodox one does not have fundamentalist bases. That is why, in measurements, religious tolerance registers only irrelevant fluctuations, except for events which may generate discussions related to the dethronement of the Orthodox religion from the rank of national religion.

The labour market is a field in which discrimination on religious grounds is rarely noticed. Only the 2009 and 2010 comparative data are relevant for the small perception fluctuations, which, in rigour, can fall within the margin of error of a survey. Over 70% of the respondents gave equal opportunities to persons with a different religion to the question: "Holding the same degree or having a similar training level, persons who practice a different religion than the Orthodox one succeed harder or easier to obtain a job or be promoted compared to other persons?". The 2009 answers were: harder 8.6%, as hard/easy 78.2%, easier 5.6%, I don't know/I don't answer 7.7% and for 2010: harder 16%, as hard/easy 72%, easier 5%, I don't know/I don't answer 6%.

Holding the same degree or having a similar training level, persons who practice a different religion than the Orthodox one succeed harder or easier to obtain a job or be promoted compared to other persons?



The notoriety of the National Council for Combating Discrimination increased in time, even if statistical figures are not rigorously increasing, registering fluctuations at certain times.



IV. MEDIA COVERAGE OF DISCRIMINATION CASES

1. Mass-media and discrimination cases based on religion or conscience, age, disability and sexual orientation

Mijloacele de comunicare în masă, ziare, radio, televiziune, precum și internetul constituie elementMass communication, newspapers, radio, television and internet are fundamental

tools for the access to knowledge and information, both globally and at community level. Since the media covers different topics related to discrimination and equality of opportunity, this definite influence on the public opinion is felt in the Romanian society. That is why, the media can be "a double-edged tool". On one hand it forms, on the other it deforms. It can be an important awareness factor for promoting diversity, but not infrequently, through television, press or radio prejudices or stereotypes can be reinforced.

In the society, as in the media, stereotypes are inevitable. They function like codes, that give the public a quick and generic impression about a person or a group, usually with reference to their social role, their occupation, sexual orientation, religion or any other category or any other criterion.

Discrimination cases in which were involved famous persons in public life enjoyed increased visibility. It may be noted that media treats mainly sensational topics related to discrimination, especially related to the statements of personalities of political or fashionable life. Some of their statements were relevant elements for the debates that took place in the application of sanctions by the National Council for Combating Discrimination. Thus, the sanctioning activity conducted by NCCD captured the interest of journalists and was closely followed in relation to public personalities.

It is important to note that the written press also took information considered relevant for the NCCD activity or from its field of interest, being a necessary and important feedback for the institution, irrespective if it was found in positive, negative or neutral terms of the journalistic discourse.

2. The content analysis of discrimination in media coverage

The content analysis performed on the press show that most articles referring to NCCD were neutral, even when the story was focused on sensational and on the names of some personalities involved in the events reported. The interest of the written press for the issue of discrimination is increasing, as it results from the monitoring, the number of articles concerning the discrimination grounds of Directive 2000/78/EC increasing during 2006 – 2008 from 324 to 455.

	Press articles reporting topics of discrimination		
	2006	**2007**	**2008**
Ground			
Religion	126	98	114
Convictions	2	2	36
Disability	50	71	102
Age	9	44	81
Sexual orientation	137	173	122
Total	**324**	**388**	**455**

It is obvious that some criteria were more often the topic of press articles, journalists showing more interest for them and other criteria were reflected to a lesser extent in the pages of journals. The sexual orientation criterion registered a high number of articles, its opposite being the criteria of age and convictions.

The press' references to issues of discrimination were varied, including the presentation of national or European strategies addressing this area, surveys or the description of practical cases of discrimination The analysis of written press also revealed the interest for the issue of discrimination in the international field, with a generous space, especially for reporting events which had a significant content of tabloid information.

3. Topics related to discrimination on sexual orientation

In the international area, the most treated was the topic of sexual orientation, especially the gay marches from other states, comments regarding their organization and the people's reaction to them as well as topics that lend themselves to fashionable, unusual interpretation, such as the law "Don't ask, don't tell" in the United States of America according to which homosexuals are allowed to join the army, but they can be expelled if they disclose their sexual orientation, for whose repeal President Obama received the support of artist Lady Gaga, who posted on Facebook and Twitter a record with her dressed in a man's suit, standing before an American flag and urging senators to vote. At the beginning of 2006, the criterion "sexual orientation" was presented in the pages of journals because of international debates regarding the legalization of marriages between same-sex persons.

Another campaign which was held internationally in order to eliminate homophobia in football in particular and in sports in general was reflected by the Romanian press, taking the statements of high-performance athletes, but without generating debates or articles regarding the situation of certain Romanian sportsmen or the opinions of personalities of Romanian performance sport.

It is worth mentioning that very little has been written in Romanian newspapers regarding homosexuality in Romania or related to cases and national campaigns. As a reflection of the Romanian society, the press had the "stage fright" in the direct coverage of the sexual orientation ground, extensive reports or disclosure about the gay community being rather the exception in newspapers' pages. That is why, the external topics and campaigns regarding the subject were taken, which were treated in a tabloid fashion, no debate being launched, no case disclosed and no local involvement regarding these topics.

The particular exception of the Romanian press in addressing the sexual orientation criterion was the period of events that prefaced and concluded the marches and parades of sexual minorities, "Gay Fest".

A constant appearance in the Romanian press was the large number of articles yearly dedicated to the parade of sexual minorities, "GayFest". On this subject were published every year reports that showed the life of sexual minorities, various pro and con debates on this topic were organized, there were articles for the position against, which the Romanian Orthodox Church adopted to same-sex marriages, there were comments and parallels on the situation in European countries in which the marriage between homosexuals is allowed.

Along with journalistic materials that aimed to increase the degree of tolerance to the gay minority, there were numerous references that just led (directly or indirectly) to strengthening the prejudices and stereotypes related to this community.

Therefore the attention that the written press gave to persons with a different sexual orientation was not always equivalent to the promotion of rights and values of this community. The steps that a part of the press has made in view of eliminating or at least reducing the discriminatory attitudes of which homosexuals are victims were reduced in impact, just because of certain articles which promoted existing prejudices.

4. Topics related to discrimination on grounds of religion or convictions

In February 2007, the criterion "religion" is in the second place, with a high number of articles, due to the international scandal regarding the publishing of Mohammed's caricatures. NCCD beside the Romanian Press Club recommended that journalists should not take such caricatures and if they still print them, such aspect should be treated in the spirit of religious beliefs of every people.

In general, the criterion religion has registered most publishing in a defined period, reflecting a certain event or a given situation, as was the case reflected internationally of Mohammed's caricatures or of a topic debated nationally regarding a Decision of the National for Combating Discrimination of withdrawing religious symbols from the Romanian schools.

Within two months (November – December 2006), the religion ground registered a high number of articles reserved exclusively for comments, debates, editorials, etc. regarding the recommendation of NCCD's Steering Committee concerning the presence of religious symbols in the public education schools in Romania.

Under titles such as the one in "Adevarul" newspaper – "NCCD removes icons from the schools", all national daily newspapers have reported on the regulation by which the National Council for Combating Discrimination has recommended that the Ministry of Education and Research (MER) should draw-up an internal standard regarding the presence of religious symbols in schools "only" and "exclusively" in religion classes. This recommendation had generated many opinions pro and con, debates, editorials, comments to the topic. The last months of 2006 and the first half of 2007 registered a high number of articles for the criterion "religion", which in the other months and year constantly held a small number of appearances.

The newspaper "Ziua" presented in detail this case. The journalists fully took NCCDs' release of 21 November 1006 which announced the Decision of the institution's Steering Committee to regulate the display of religious insignia in the public schools in Romania. Following the evolution of the event, journalists have published articles starting from the reaction of the public, of the MER, of the Romanian Orthodox Church and of other institutions and NGO's depending on NCCD's decision.

On June 18 2007, the press reported information regarding the sentence of the Court of Appeal Bucharest, considering that it accepted NCCD's recommendation that the Ministry of Education and Research (MER) must "*ensure the exercise of the right to education and access to culture under equality conditions; observe the right of parents of educating their children according to their religious and philosophical beliefs; observe the laic nature of the state and the autonomy of cults; ensure the freedom of religion, conscience and beliefs of all pupils under equality conditions".* The Ministry of Education and Research filed an appeal and on 12 June 2008 the press changed the titles like "*NCCD removes icons from the schools*" with titles like "*Icons remain in schools*" , since the Supreme Court ruled that the presence of icons in schools is legal, admitting MER's appeal to the lower court, which maintained NCCD's recommendation of removing religious symbols from schools.

Other topics related to religion concerned subjects which were also reported in the international press regarding the issue of the Islamic veil or the restitution of Greek-Catholic property confiscated by the Communist government in 1948 and transferred to the Romanian Orthodox Church.

5. Topics related to discrimination on grounds of age and disability

The age criterion was barely reflected in press articles in Romania. The situation was somewhat contradictory, given the frequent cases of discrimination with victims from this category. As in the case of disabled persons, statistics showed a higher rate of discrimination for this category, especially in the field of employment and at the workplace.

As shown by the few press articles published in this topic, age was for the monitored period a discrimination criterion, but it was not directed strictly to young or elder ones. Press releases regarding employment were most visibly marked by discriminatory phrasing, in 2002 the first NCCD instruction being related to the regulation of their publishing on non-discriminatory terms.

Following the publishing of the discrimination barometer for 2007, in September 2008 the press reported that the number of complaints received by NCCD has doubled since 2006 and on the most reported discrimination criterion was that of disability. In 2006, the disability criterion was debated from the legal point of view and at the level of the civil society, also in the press, since in 2007 was supposed to enter into force the law regarding the protection and promotion of the rights of disabled persons.

Although disabled persons are in the top of discriminations in all spheres of social life in Romania, the press was scarcely interested to be the support of public debates on certain themes or the spearheading of certain campaign of awareness and information. They were pleased also in the case of this criterion to be just a means of recording certain facts or ideas.

The filed which is the most often reported by the press as the place of manifestation of most discrimination cases was that of the labour market. Some journalists have tried to identify the weaknesses of the public system of that of the social gear in order to record the blocking regarding the chances of a disabled person to access the labour market: referring to the law 448/2006 which compels employers which have at least 50 employees to employ disabled persons – in a percentage of at least 4%, the journalists from the daily newspaper "Romania Libera" tried to find out how this law is applied: "*We know that employers don't observe the 4% rate and choose either to pay a tax to the state, which equals to the half of the average wage on economy or to buy products and services of the protected units. Protected units are those who have more then 30% of the personnel persons with disabilities. Things do not always happen this way and there are all sorts of loopholes in order to avoid fake protected units, which acknowledged themselves, but persons with disabilities are employed just officially. Unfortunately, hardly anybody checks this".*

In order to highlight some aspects related to the problems of persons with disabilities, the newspapers often published statistics which proved that "*Romanian employers avoid persons with disabilities*" and in 2010 "*only 12% of persons with disabilities had a job in Romania, our country being ranked last in Europe, where the average employment of such persons in 50%".*

However, very few publications have taken the decision to draw attention on the level of civic culture, of the lack of social exercise, both of the population and employers, but also of disabled persons. "*Employers exclude from the start disabled persons*" and disabled

persons "*live between total exclusion and feelings of compassion*". This cleavage was rarely debated in the pages of national press, the mentioned references being most often found in the statements of thematic interviews. In the monitored period, the physical disability was the topic "found" in the press, the mental disability being treated as a sensational topic, more as a topic that rather raised curiosity, than the real civic interest. As we approached the year 2010, however, the awareness of the lack of regulation in this field and the non-enforcement of existing ones have raised more often and more applied the interest of the press.

On 15 September 2010, on full media campaign regarding the situation of Roma expelled from France, the Romanian press considered significant to cover the debate on adopting a legal act regulating the provision of specialized services to children with autism, the establishment of a system to support parents in the fight with autism and ensure the children's rights to development.

A widely debated topic was the intention of the Ministry of Education of equipping the kindergartens with dolls of different races and different disabilities. Taken by the press at the beginning as an entertainment topic, during a year, the project announced by the Ministry of Education faced more seriously the journalistic analyses and objections regarding the appropriateness of this investment at a time when Romania undergoes a visible economic and financial crisis. According to the project, each of the 12.557 kindergartens in the country was supposed to be equipped with one doll with disabilities. Following a press campaign, led mainly by the newspaper "Jurnalul National", the Ministry of Education gave up the bidding provided by the project.

V. SANCTIONS APPLIED IN THE AUDIOVISUAL FIELD FOR BREACHING LEGAL NORMS REGARDING DISCRIMINATION

1. The National Audiovisual Council and discrimination sanctions

As regards the television and radio stations, the National Audiovisual Council (NAC) is the institution which holds the authority to monitor and sanction breaches of legislation in the audiovisual field.

During 2002 – 2010, the National Audiovisual Council applied 21 sanctions, of which 10 fines amounting to 170.000 lei, for breaching the law in the audiovisual field regarding discrimination on grounds of nationality, race, religion, gender, sexual orientation or ethnic origin.

	Sanctions on discrimination in the audio-visual field								
	2002	2003	2004	2005	2006	2007	2008	2009	2010
Sanctions	-	-	4	4	5	3	3	1	1
Total 21			4	4	5	3	3	1	1

The sanctions were applied as follows: 18 for the television stations in Bucharest; 2 for radio stations in Bucharest; 1 for local television stations. Of them: 9 – discrimination on

grounds of nationality; 6 – discrimination on grounds of race; 2 – discrimination on grounds of sexual orientation; 2 – discrimination on grounds of nationality, race; 1 – discrimination on grounds of race and sexual orientation; 1 – discrimination on grounds of gender.

The station TVR1 was sanctioned with public formal notice, as in the show "Words about facts" of 18.11.2004, the show's guest, Mr. Corneliu Vadim Tudor, as candidate for presidency expressed very serious accusations against the members of the Embassy of United States of America in Bucharest and in this context were made discriminatory statements on grounds of sexual orientation, breaching the provisions of art. 14 and 15 of Decision no. 284/2004 on the protection of human dignity and the right to own image. In essence, Mr. Corneliu Vadim Tudor made the following statements against the members of the US Embassy to Bucharest: "*There is a nest there of homosexuals and pedophiles and if you ask them how many are pedophiles and how many homosexuals, they will tell you that they are not".*

The station Prima TV was sanctioned with fine amounting to 10.0000 lei, because in the show "Hypercritical's Chronicle", edition of 14 March 2007 (resumed on 21 March 2007) were presented discriminatory materials against persons with a different sexual orientation than the heterosexual one (discrimination on grounds of sexual orientation), deed which infringes the provisions of art. 46 par. (2) of the Audiovisual Code. The show presented a material which referred to Mircea Solcanu, co-entertainer together with Cabral of the show "Night stories" broadcasted by ACASA TV. Mircea Solcanu made public his sexual orientation, in the sense of belonging to the community of persons with a homosexual orientation. The NAC members ascertained that by promoting a discriminatory attitude towards a category of persons with a certain sexual orientation, the broadcaster allowed the performance of the show outside the legal framework, thus breaching the right to private life which also includes aspects regarding sexual orientation.

OTV station was sanctioned by fine amounting to 5000 lei, since in the show "Dan Diaconescu Direct" of 11 November 2004, the guests expressed intolerant and discriminatory statements on grounds of sexual orientation, which breaches the provisions of art. 40 of the Audiovisual Law (discrimination on grounds of sexual orientation). The show's guest, Mr. Gigi Becali stated about the sexual minority of homosexuals: *"it is an attack to the moral safety of this people",* " *it means that we have to beware, to see that two of them are homosexuals", "why doesn't come one (a homosexual) to me so that I pick his feet", "they are also people (homosexuals) and I don't want to shake hands with them", "to legalize sin in Romania, because for me this sin (homosexuality) is the second sin after death".*

OTV station was sanctioned by fine amounting to 25.000 lei, since in the show "Dan Diaconescu Direct", editions of 17 and 24 May 2005, broadcasted under the titles "The revelations of Corneliu Vadim Tudor" and "Vadim throws the bomb in the crisis of hostages" was promoted a discourse with discriminatory attitudes against certain homosexual minorities, which infringes the provisions of art. 15 of NAC's Decision no. 284/2004 regarding the protection of human dignity and of the right to own image. Both the guests and the host manifested discriminatory attitudes against persons with a different sexual orientation. In the context of the homosexuals and lesbians march of 29 May 2005 which took place in Bucharest, Mr. Corneliu Vadim Tudor said: "*God, they shouldn't annoy me*, *as I could empale them and they might like it…".*

OTV station was sanctioned by public formal notice because, in the show of 8 May 2008 of "Dan Diaconescu Direct" it broadcasted an election musical video, promoting the PIN candidate Cozmin Gusa, which had a clear discriminatory message on grounds of nationality, race, disabilities, sexual orientation against certain persons or group of persons, which is forbidden by the audiovisual legislation.

ANNEXES

NCCD budgets situation and budget execution during 2002 -2010

NCCD budget and employees during 2002 - 2010				
YEAR	**Total budget**	**No. of employees**	**Program's budget**	**Budget execution**
2002	293.338	24	0	282.299
2003	1.820.170	25	380.470	1.782.909
2004	2.149.100	43	572.500	2.063.075
2005	4.491.620	37	3.070.330	3.586.060
2006	3.570.000	41	1.850.000	3.829.588
2007	4.250.000	54	254.000	3.951.105
2008	6.303.726	65	1.547.000	5.864.887
2009	4.554.200	60	478.000	4.455.507
2010	4.118.000	66	448.000	4.021.691